1945-52

File No. 0 Contempt of Courts/43-52

Legal **DEPARTMENT**

A **BRANCH**

Subject:--

Opinions under the [Indian]

Contempt of Courts

Act, 1926

[files from 1943 to 1952 are bound together]

R 225 C

C O N T E N T S

Legal Department Vol.No.O.Contempt of Courts/1942.

Sr. No.	Compilation No.	Subject	Pages
		Opinions under the contempt of Courts Act, 1926.	
	O.Contempt of courts/1941.	File not opened.	
	O.Contempt of courts/1942.		
1.	R.I.No.699/19-1-42. O.No.1083/5-2-42.	Question whether the High Court should be moved by Govt. or whether it would be left to the trying judge to move the High Court for action for contempt of court.	3-4
2.	R.I.No.5206/13-6-42. O.No.5465/3-7-42.	Re: Suit filed by one Abdul Rahiman against Ex-Administrative Officer Mr.Saokar, of the Dhulia Municipality Sub-Committee appointed by the School Board of the Malegaon Municipality to inquire into the conduct of Mr.Rahiman reports that the said Abdul Rahiman is not guilty of any offence of mis-appropriation of school money as decided by the Administrative officer. In the circumstances Mr.Saokar states that the school Board has become guilty of contempt of court and therefore requests to move the High Court in the matter. He has also sent the pps. for perusal of the Adv. General. Question whether the case is a fit one to move the High Court as proposed by Mr. Saokar and if so, whether there is any objection to trouble the Adv.General to give the necessary advice to Mr. Saokar in this case.	5-8
3.	R.I.No.5819/4-7-42 O.No.5700/13-7-42.	Re: Passage in the newspaper criticising the criminal courts for passing heavy sentences on the accused in spite of the fact that the reports of the speeches ~~x~~ for which they had been prosecuted were not complete and there were strange discrepancies in the evidence tendered by witnesses. Question is whether this criticism amounts ~~to~~ to a contempt of court.	9-12
4.	R.I.No.8111/18-8-42. O.No.8143/7-10-42.	Re: Recommendation of the council of State that the G. of I. should undertake to examine the law of contempt of courts as administered in British India with a view to amend and consolidate it if found necessary. In this connection the following points are under consideration:- 1) The conferment of a right of appeal in contempt cases of a criminal nature and; 2) the barring of a scandalised judge from participating in the adjudication of contempt proceedings based on the scandalisation.	13-20.

ARD 11-8

5. R.I.No.12531/14-12-42.
O.No.10227/23-12-42.

Re: Question whether the leading article in the issue of the "free Press Journal" containing comments on a case in which two Negro seamen were convicted by the Chief Presy. Magistrate Bombay, of assaulting a superior European officer and fined Rs.25 each, amounts to contempt of court.

21-26

O.Contempt of Courts/43.

6. Re: Opinion recorded by the R.L.A. on the following point :
Question whether it is a contempt of court to publish anything which would have effect of prejudicing mankind for or against a party before the cause is heard.

27-32.

O.Contempt of courts/44.

7. O.No.67-P.Confl./21-7-44. Question whether the observation in an official communication made by the Senior Police Prosecutor that "it is very likely that the Magistrate did not pass a conviction judgment as the presence of the accused was indispensible for delivering it, or he may have tried to placate them by acquitting them since they are to be tried in many more cases" tantamounts to be contempt of court.

35-40

O.Contempt of courts/45.

8. R.I.No.19-Confl./16-1-45
O.No.46-Confl./1-2-45. Re: Contract given to Mr.Patel for supplying fire-wood to Military on the condition that the same was liable to be terminated if there was bribery on the part of Mr.Patel.
Question whether the rescission of the contract under the above condition amounts to contempt of court.

43-48.

O.Contempt of courts/46.

9. R.I.No.10603/25-11-46.
O.No.8929/10-12-46. Question whether sec.197(1) of the cri.Pro.Code which requires the sanction of Govt. for prosecuting a Govt. servant, irremovable from office without the sanction of Govt. for an offence alleged to have been committed while acting or purporting to act in the discharge of his duty will have any application to cases of contempt of the High Court in which Govt. servants are involved.

51-56.

O.Contempt of courts/47.

10. O.No.67-Confl/18-2-47. Re: Attempt of the Girni Kamgar Union to cast aspersions in the booklet called "Girni Kamgarache Paper" on the integrity and impartiality of Sir Harsidhbhai Divati, President of the Bombay Industrial Court in connection with the pending arbitration proceedings about certain demands made by the Union.
Question whether these aspersions amount to a contempt of court.

57-58.

11.	O.No.10853/15-11-47.	Re: Prosecution of one Mr.Gaikwad in the court of the Additional Resident Magistrate, F.C. Pandharpur for the offences under clauses (a) and (b) of section 4(1) of the Bombay Prevention of Adulteration Act, 1925. Letter addressed to the Magistrate by one Mr.Umate stating that the business of the accused Mr. Gaikwad was not that of a milkman and that he sold milk as a servant of the milch cattle owner and consequently even if there be any adulteration in the milk it must have been by the cattle owners themselves and so Mr.G. may be pardoned. Question whether the letter written by Mr.Umate constitutes contempt of court. 59-62.
	O.Contempt of courts/48.	
12.	R.I.No.6877/48. O.No.6033/28-6-48.	Re: Proposed prosecution of Mr. ~~Bhatnagar~~ Bhatnagar for the alleged defamatory letter which he wrote to H.M.(Law) complaining about Presidency Magistrates courts No.13 at Worli and No.8 at Esplanade. Question whether the Presidency Magistrates concerned can sue Mr. Bhatnagar for defamation or can take steps for contempt of court. (Pl. see R.L.A's No.8759 dt.15-9-48) 63-66
13.	R.I.No.10229/13-8-48. O.No.8759/15-9-48.	Re: Reconsideration of R.L.A's opinion No.6033 dated 28-6-48. Question regarding dropping the proposal of either prosecution of Mr. Bhatnagar for defamation or taking steps against him for contempt of court. (Please R.L.A's No. 6033 dt. 28-6-48) 67-82
14.	R.I.No.11314/10-9-48. O.No.9305/1-10-48.	Question whether the Editor of the Kanara News, who has commented on some of the corruption cases pending in court of the Sub-Divisional Magistrate and some other Magistrate alleging that there was no valid sanction of Govt. for the prosecution of the accused, can be prosecuted for contempt of court. 83-86.
15.	O.Contempt of courts/49 R.I.No.17028/20-12-48. O.No.1093/29-1-49.	Question whether the Revenue court is a subordinate court within the meaning of sec.2(1) of the contempt of courts Act, 1926. 87-90.
16.	O.No.206-Confl/28-3-49	Re: Proceedings against the person or persons concerned for contempt of court for publishing court documents before the case is decided in the court. 91-96.

17. R.I.No.10593/13-7-49.
O.No.8315/22-7-49.

Re: Amendment of contempt of courts Act 1926 to remove certain lacuna in the law. Request of G. of I. to Provl. Govts. to offer remarks on the following proposals :
(a) When a person commits contempt of a court within the Province in which he normally resides and flees outside the province, should there be provision for bringing him before the High Court of his Province x ?
(b) Where a person commits contempt of a High court outside his own province should his own High Court be empowered to proceed against him on the complaint of the other High Court or alternatively should in such cases the federal court be given jurisdiction on the complaint of the central Govt.

97-104

O.Contempt of courts/50.
18. O.No.15430/4-11-50.

Re: Prosecution of the Newspaper for contempt of court as a letter, which calculated to prejudice the fair trial of the cases which were then in progress, was published in it.

105-106

19. R.I.No.23215/24-11-50
O.No.18244/27-12-50.

Re: Prosecution of a Newspaper for contempt of court as some allegations were made against the Resident, Magistrate Holiyal and the same published in the "Kanara News."

107-110.

20. O.Contempt of courts/51.
O.No.9311/13-6-51.

Question whether the following remarks amount to contempt of court:-
"As we do not possess at present the copy of the judgment in which the Police officials have been acquitted we cannot write anything about it today. We only say that this judgment cannot satisfy the people. This judgment has once again shown that people do not always get true justice within the legal framework of a capitalist state.

111-112

21. O.No.10872/10-7-51.

Question whether the article in the Weekly 'Sarvodaya' which points out certain defects in the administration of criminal law, amounts to contempt of court and if so, whether it would be worthwhile to take action against the editor, printer and publisher of the paper.

113-116.

22. R.I.No.19985/26-9-51.
O.No.15817/5-10-51.

Question whether the article in the Marathi Weekly "Kolaba Samachar" bearing on the Gangal Murder which states as follows amount to contempt of court:-
"It is difficult to say whether it was just on the part of the Magistrate (therefore whom the private complaint was filed) to dismiss the suit (Complaint) by examining only the papers of the Police Inquiry and without giving any opportunity to the complainant to put forth his evidence. If after hearing the complainant the Magistrate had found that the evidence

adduced by him was inadmissible then he would have been justified in dismissing the case without committing it to the Sessions Court. We sincerely think that the Magistrate should not have played a second fiddle to the Police.

117-120.

23. O.No.16784/22-10-51. Question whether the action of Shri Patki can be calculated to bring the court of the third class Magistrate Panvel into contempt.

121-122.

24. O.No.17490/5-11-51. Question whether proceedings for contempt of court can be taken against Shri G.L.Patil for his comments in a newspaper on the preliminary notice issued by the Sub-Divisional Magistrate while taking action under section 46(3) of the Bombay District Police Act, 1890.

123-124.

25. O.No.17915/12-11-51. Question whether the communication addressed to the Collector in his executive capacity by private individual amounts to contempt of court.

125-126.

26. R.I.No.20161/28-9-51.
O.No.16223/13-10-51. Question whether the communication addressed to Shri Mirchandani who was a member of Tribunal by a private person in which allegations of bribery were made against the Mamlatdar of Navsari, amounts to contempt of court as the Tribunal cannot be considered to be a court in the strict sense of the word.

127-130.

O.Contempt of courts/52.

27. R.I.No.1796A/25-1-52.
O.No.138-Confl./4-2-52. Question whether action for contempt of court can be taken against the newspapers "Jyoti" "Jwala" and "Bambai" for publishing articles criticising the judgment of a capital sentence case, which is pending confirmation by the High Court.

131-132.

28. R.I.No.2962/12-2-52
O.No.2840/21-2-52. Question whether there is a strong case for taking action for contempt of court in respect of the articles in 'Kanara News' which commented on a case pending trial in a court and whether Govt. should initiate the proceedings. 133-134

29. R.I.No.6877/31-5-48.
O.No.6033/28-6-48.
R.I.No.10229/13-8-48.
O.No.8759/15-9-48.
R.I.No.498-Confl/
6-11-48.
R.I.No.5148/7-4-49.
O.No.3845/8-4-49
R.I.No.3325/15-2-52.
O.No.11115/4-7-52
O.No.10359/21-6-52.
R.I.No.12613/26-6-52. Re: Proposed prosecution of Mr. Bhatnagar for the alleged defamatory letter which he wrote to H.M.(Law) complaining about Presidency Magistrates' Court No.13 at Worli and No.8 at Esplanade.
Question whether the Presidency Magistrates concerned can sue Mr. Bhatnagar for defamation or can take steps for contempt of court.

135-216.

30. R.I.No.19295/14-8-52. Re: Criminal Appln.No.657/52 D.H.Charegaonkar Vs. State. 217-218.

31.	R.I?No.12163/20-6-52 O.No.10906/1-7-52.	Question whether the comments on the case pending confirmation by the High Court amount to contempt of court. 219-220.
32.	R.I.No.20031/26-8-52. O.No.14294/3-9-52.	Question whether the Editor of Malvan Patrika can be prosecuted for contempt of court as he published a letter under ~~co-option~~ caption "Indirawainicho Patra" containing comment on the evidence led by the prosecution in the kidnap case pending trial in the court. 221-224.
33.	R.I.No.21611/15-9-52 O.No.15337/18-9-52.	Question whether the proposal of the High Court to issue a circular to the effect that persons committed to civil jail for civil contempt of court should be given subsistance allowance as is granted to judgment debtors confined in civil jails is reasonable. 225-226.

43

Contempt of Courts/43

It seems to me that during the pendency of suit, or even after notice of suit is received under sec. 80 C. P. C. , nothing should be done which might affect or prejudice the merits of the suit or proposed suit.

Will A.G. please examine whether there are any rulings on the point.
The dictum laid down in 33 Bom. L.R. 1467 at p. 1429 might be explored.

Sd/- P.M.M.

13-9

V.M.D.
4-5.56

The observations of Marten C.J. in 29 Bom. L.R. 1427 at p.1429 appear to contemplate cases wherein the plaintiff intends to sue for an injunction to restrain the doing of act, and upon notice of action given the defendent, the latter anticipates a hostile order and for instance does the very thing that the suit is intended to prevent himfrom doing, such as putting up a wall to obstruct the plaintiff's alleged easement of light and air. In such cases, the Chief Justice said, the Court may, even on an interlocutory application, and before the suit is heard and decided on merits, direct the defendent to pull down the structure and restore the status quo ante. The observations were made in answer to the argument, (which had been upheld in earlier Bombay decisions) based upon the serious inconvenience of requiring notice under section 80 in cases where the plaintiff prayed for an injunction. The threatened suit is for damages, and Govt. By direction enquiry into allegations of police excesses would not be anticipating a hostile order in the precise sense indicated by the Chief Justice. But such order might be open to objection from another point of view.

2. A. It is a contempt of court to publish anything which would have the affect of prejudicing mankind for or against a party before the cause is heard, because injurious misrepresentations concerning parties maycause them to discontinue the action, or to compromise, or may deter other persons with good causes of action from coming to the Court: See William Thomas Shipping Co.Ltd. Dillon(L.V.) and Sons Ltd. v. The Co. Rg. Thoas (Sir Robert)(1930) 2 Ch.368. It is thus that ordinarily it is of the essence of the offence that the proceedings should be pending when the publication takes place; but the opinion has been expressed that it is not necessary for a cause actually to be begun, since if it be imminent, it is possible " very effectually to poison the fountain of justice before it begins to flow."R v.Parke (1903) 2 K.B. 432 at p.437. In the present case a notice of suit has been given already and it may be reasonably expected that the suit will befiled as soon as the statutory period of

of two months expires. The main pquestions involved in the suit are the very questions upon which the suggested inquiry is to be directed. An inquiry will involve the recording of evidence and its proceedings will be attended with publicity. It seems to me that not useful purpose will be served by holding an enquiry at this stage for it cannot be proceeded with, after the suit is filed A

Sd/- E.G.M.
14-9

R.L.A.

Reply A-R.

Sd/- P.N.M.
15-9

V.M.D.
5-9556.

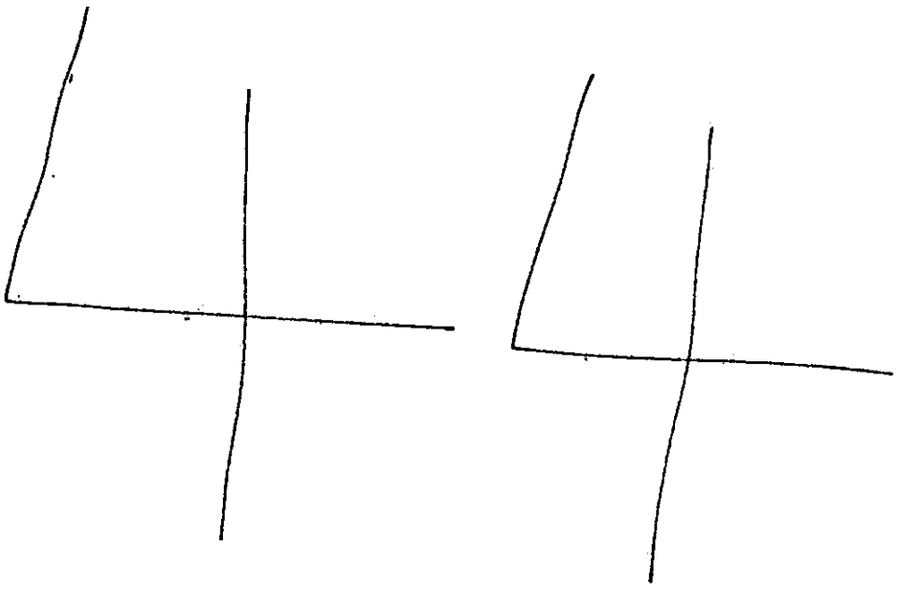
Office of the R.L.A.

"It is contempt of court to publish anything which would have the effect of prejudeing mankind for or against a party before the cause is heard, because injurious misrepresentations concerning parties may cause them to discontinue the action, or to compromise, or may deter other persons with good causes of action from coming to the court": See William Thomas Shipping Co. Ltd. Dillon (H.V.) and Sons Ltd.v. The Co;, Re. Thomas (Sir Robert)(1930) 20h.368, It is ture that ordinarily it is of the essence of the offence that the proceedings should be of the essence of the offence that the proceedings should opinion has been expressed that it is not necessary for a cause actually to be begun since, if it is imminent,it is possible "very effectually to poison the fountain of justice before it begins to flow".R.v.Parke (1903) 2K.B. 432 at p. 438. In the present case a notice if suit has been given already and it may be reasonably expected that the suit will be filed as soon as the statutory period of two months expires. The main questions involved in the suit are the very questions upon which the suggested inquiry is to be directed. An inquiry will involve the recording of evidence, and its proceedings will be attended with publicity. It would not therefore be advisable to hold an enquiry at this stages for in any event it cannot be proceeded with after the suit is filed.

Id/-P.N.M.
16-9

Remembrancer of Legal Affairs.

V.M.D.
5-5-56



O contempt of Court/44

13/8

Submitted.

Four persons were charged with offence under rule 38(5) of the D.of I Rules. The sub-Divisional Magistrate, Dharwar, who tried the case, gave benefit of doubt to the accused and acquitted them under section 256 of the Codem of Criminal Procedure. 1898. In his report No. 561 dated 18-5-1944 submitted to the D.S.P.Dharwar recommending institution of an appeal in the H.C. Bombay, against the order of acquittal passed by the Sub-Divisional Magistrate, the Senior Police Prosecutor, Dharwar, appears to have made the following observations:-

" Apart from the merits of the case, one factor appears to have weighed with the Magistrate for his having arrived at the present decision. Some time prior to the judgment these accused and many others concerned in similar civil disobedience movement cases have betaken to methods of vialance such as shooing witnesses, refusals to attend the Court. Sts. with a view to somehow get over the cases which are pending against them. Even in this case, the accused refused to attend the Court and the Magistrate had to deliver the judgment behind their back as would be seen by the remarks of the Magistrate at the end of the judgment. It is very likely that the Magistrate did not pass a conviction judgment as the presence of the accused was indispensible for delivering it, or he may have tried to placate them by acquitting them since they are to be tried in many more cases. This fact appears probable since this very Magistrate has passed a conviction judgment on 10-1-44 in Pudakalakatti case (Dharwar Taluka Cr.No. 16/43, rule 35 D.I.R.) which has been confirmed in appeal on weaker indentification evidence alone.

2. The D.M. Dharwar and the Public Prosecuter, Dharwar, consider that the observation of the Senior Police Prosecutor that " it is very likely that the Magistrate did not pass a conviction judgment as the presence of the accused was indispensible for delivering it

It , or he may have tried to placate them by acquitting them since they are to be tried in many more cases" Tantamounts to be contempt of Court. The question for R.L.A.'s consideration is whether this view is correct.

3. Contempt of Court is either(1) criminal contempt, consisting of words or acts obstructing, or tending to obstruct, the administration of justice, or(2)contempt in procedure, consisting of obedience to the judgments, orders, other process of the Court, and involving a private injury (vide para.1 at p. 2 of Halsbury's Laws of England Vol. 7). The High Courts have power to punish the offence of contempt in relation to proceedings before them not in virtue of the Penal Code but by virtue of the common law of England. The power of the H.C. to commit for any contempt of itself is inherent in the Court and arises from the fact that it is a Court of Record. This power has not been taken away or in any vise limited by the Contempt of Courts Act, 1926. The law as laid down in Reg.v. Gray (1900) 2 K.B. 36 at 40) by Lord Russel of Killown L.C.J. and followed by the P.C. in Ambard v. Attorney-General of Trinidad (38 Bom.L.R. 681 at 687-88) is as follows:-

" Any act done or writing published calculated to bring a Court or a judge of the Court into contempt. or to lower his authority, in a contempt of Court. That is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts is a Contempt of Court. The former class belongs to the category which Lord Hardwicke L.C. characterised as 'scandalising a Court or a judge' ..... That discription of that class of contempt is to be taken subject to one and an important qualification. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as Contempt of Court."

4. In Ambard vs. Attorney-General of Trinidad (38 Bom.L.R.P.681) their Lordships further observed thus:-

" ~~But whether the authority~~

37

"But whether the authority and position of individual judge on the due adminsitration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith in private or public, the public act done in the seat of justice. The path of criticism is a public way; the wrong headed are permitted to err therein: provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice, or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she may be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary men."

In Govt.Pleader, Bombay v. Tulsidas (40 Bom.L.R.p.75) Beaumont C.J.observed; " It has been laid down many times and by the highest tribunals that judges are not immune from critism and that fair and reasonable criticism of a case which is finished is not objectionable."

The words "It is very likely" and " This fact appears probable" in the report of the Senior Police Prosecutor, Dharwar, appear to suggest that he reached his own conclusion from certain circumstances mentioned therein, and this conclusion may be right or wrong. Moreover, the case is finished and the Senior Police Prosecutor has made certain observations to the D.S.P. in official correspondence with a view to support an appeal against the order of acquittal passed by the S.D.M. They are made bona fide and there appears no evidence that he exceeded his ordinary right in commenting upon the judgement, or that he acted with untruth or malice or with the direct object of bringing the administration of justice into disrepute. The passage objected to does not appear to be tantamounting to contempt of Court.

As regard the question of instituting an appeal it appears that the S.D.M. has not properly appreciated the evidence on record. In the ordinary course, the papers will

have to be referred to the G.P. , High Court for his opinion before sanctioning an appeal.

Id/- E.P.B.
17-7

S.A.S.

" Any act done or writing published which is calculated to bring a court or a judge into contempt or to lower his authority, or to interfere with the due course of justice or the lawful process of the court is a contempt of court"(See Halsbury Vol. VII pp.6, 7). On the grounds of public policy official transactions between the heads of departments of Govt. and their subordinate officers are in general treated as secrets of state(Chatterton v. S. of S., 1895, 2 Q.B. 189). That principle is contained in section 124 of the Indian Evidence Act. In the present case the statement to which the D.M. Dharwar, has taken exception is contained in an official communication sent by Mr. Behere Police Prosecutor im the course of his duties to his superior, the D.S.P., Dharwar. That statement cannot be deemed to have been published and consequently, however objectionable, it does not amount to a contempt of the Sub Divisional Magistrate in respect of whose judgment in the case it was made. The view taken by the Secy., H.D. is correct.

2. On the second question A.L.R. is requested to say whether he desires to consult the G.P. High Court ussualy done or wants me to note.

A.L.R.

I agree regarding the 1st question. Reply may be S.A.S.'s note Regarding the 2nd question H.D. may be informed that the necessary case papers have been sent for and on their receipt the question of an appeal will be considered. (Mr. Rege to write today to the D.M. Dharwar and the letter should be

V.M.D. 5-5-56. 4c.

Office of the R.L.A.

"Any act done or writing published which is calculated to bring a court or a judge into contempt or to lower his authority or to interfere with the due course of justice or the lawful process of the court is a contempt of court"(see Halsbury Vol. VII,pp.6,7). On the grounds of public policy official transactions between the heads of departments of Government and their subordinate officers are in general treated as secrets of State (Chatterton v. Secretary of State, 1895, 2Q B. 189). That principle is contained in section 124 of the Indian Evidence Act. In the present case the statement to which the District Magistrate, Dharwar, has taken exception is contained in an official communication sent by Mr. Mehere, Police Prosecutor in the course of his duties to his superior the District Superintendent of Police, Dharwar. That statement cannot be deemed to have been published and consequently, however objectionable, it does not amount to a contempt of the Sub-Divisional Magistrate in respect of whose judgement in the case it was made. The view taken by the Secretary, H.D., is correct.

2. Regarding the 2nd question raised by Secretary, H.D. the necessary case papers have been sent for from the D.M. and on their receipt the question of an appeal will be considered.

Sd/- P.M.H.
Xi-7
Remembrancer of Legal Affairs.

D.M. to H.D.(Spl.), No. 67-S-Confl., dated the 21st July 1944

V.K.D.
5-5-56.
4c.

45

o Contempt of courts/ps-

XM
13/8

K

42

CONFIDENTIAL /IMMEDIATE

No. 11570A
HQ 108 L of C Area
c/o 18 ANPO
14 Jun 45.

The Secretary to the Govt
for the Legal Department
and Remembrancer of
Legal Affairs,
Bombay Government.

DEFENCE & CORRUPTION - MANUBHAI SHIVABHAI PATEL.

Sir,

In view of your advice (Ref your No. 352-Confl-dated 20 Nov 44) and personal discussion of our Staff Capt(Legal) with you on the subject, the contract of MANUBHAI SHIVABHAI PATEL was rescinded by the Commander 108 L of C Area on 25 Nov 44 (copy attached).

The contractor has now sent a notice, through his legal adviser, threatening the Area Comdr with action for contempt of Court unless the notice to rescind the contract is withdrawn.

I shall be grateful for your advice on the action to be taken by this Hqrs. A copy of the notice is, herewith, enclosed.

Sd/-
Lt. Col.
AAG.
(LT.COL. J.W.WILSON-Tel.39698)

Copy to:- 1) CRIASC. 18-1-45.
2) HQ 108 Sub Area.

V.M.D.
5-5-56.
40.

Submitted.

~~The~~

The Lt. Col A.A. G. states that the contractor has sent a notice threatening to file suit for contempt of Court in case the letter rescinding the contract is not withdrawn immediately. The R.L.A. had advised not to resined the ~~contract~~ contract pending the decision of the complaint filed against him. But the ouidty, authorities have rescinded the contract after personal discussion with the R.L.A. in the circumtances, the Lt. Col. may be requested to withdrawn the letter rescinding the contract pending the deadion of the criminal complaint withdrawn without prejudice.

2.

2. The second ref. pending in the department was put up to S.A.S. on 8-1-1945. This may be dealt with that reference and a consolidated reply may issue. The case is marked very urgently me.

Sd/-
18-1

Pl. note on the point . Whether the threatened . action to feasible.

Sd/- R.T.K.
16-1

V.M.D./7-5
4c.

Copy of this HQ No. 508 ST dt. 25 Nov 44 addsd to Manubhai Shivabhai Patel, Grain Kirona Merchant, Ravivar Peth, NASIK CITY.

FIREWOOD CONTRACT- DAKE BEALE CAMP (DEOLALI)
FOR THE PERIOD 1-6-44 TO 30-11-44.

The Commander, 108 L of C Area is satisfied that you have committed a breach of para 8(iii) (b) of the above contract. Take notice, therefore, that the said contract is hereby rescinded and your security deposit is hereby forfeited.

Sd/- C.E.H.C. ALMAN
Major General,
Commander, 108 L OF C AREA.

Copy to :-
'Q' 108 Area
CMA Southern Army, Poona
DADGar 165 L of C Sub Area
OC 506 Main Sup Dep.

V.M.D.
7-5-56
dc.

COPY

45

G.L. PATEL, Advocate
c/o C.D. VYAS, BALLB
Advocate (O.S.)

Moos Building,
Jambhulwadi
Bombay. 2
dt. 10-1-1945.

Major Gen, Commander 108 L of C Area
c/o APO 13, India.

Dear Sir,

Subject:- FIREWOOD CONTRACT, LAKE BEALE CAMP (DEOLALI) YOUR LETTER NO.502-ST DATED 25-11-44.

My client Mr. Manubhai Shivabhai Patel of Raviwar Peth, Nasik City, has placed in my hands your letter No.502-ST dated 25-11-44, with instructions to reply thereto xxxfo as follows:-

My client is extremely surrprised and aggrieved at the contents of your letter and at your decision to forfeit his security deposit.

You have stated in your said letter in effect that my client's contract for the supply of fire-wood to the Lake Beale Camp has been rescinded and that the amount of his deposit has already been forfeited, on the ground of offering bribe to a Military Officer.

In this connection I am instructed to point out to you the fact that legal proceedings have been instituted against my client in the Court of the Learned First Class Resident Magistrate at Nasik in respect of the abovementioned contract on a charge of offering bribe to the Military Officer and cheating the Government in respect of the subject matter of the contract. The charge-sheet was submitted to the Court on the 2nd November 1944.. You will thus see that long before Contract you wrote to my client about the subject matter of the xxxxxxxxxx and the forfeiture of the deposit amount, a properly constituted Court of Law had been seized of the subject-matter and thus the question of breach of para 8(II) (B) of the contract and the issue whether the bribe was directly or indirectly offered by my client or his agent or servant, was sub-judice.

I may inform you that the law in India, as in England is that when a properly constituted Court of Law is seized of a particular case and the facts and the issues involved therein, it is improper and illegal on the part of any other Authority, Military or Execute to discuss and write about the facts and the merits of the case to the parties in the case or their witnesses. Such conduct on the part of the Officer concerned amounts to prejudging the case and sitting in judgment over the issues which the law Court has to decide. It further tantamounts to usurping the duties and the functions of the Court of Law and it is penalised under the Contempt of Court's Act.

I am further instructed to state that in writing to my client, during the pendency of the case against him that you have forfeited his deposit amount on the ground of alleged breach of contract and offer of bribe, you have committed contempt of Court, though perhaps out of unawareness of the Law.

The case and the facts thereof being sub-judice, my client cannot discuss the same in this letter, but he is constrained to emphatically deny that he has committed the breach of the contract or offered any bribe as alleged by you. The forfeiture of his deposit amount is most unjust and illegal and definitely operates as a prejudice to his defence in the case pending against him.

PTO.....

The said forfeiture and yourk letter of 25-11-44 being dearly contempt of the Court, I am instructed hereby to call upon you to forthwith withdraw the said letter as well as your action to forfeiture. Please note that unless you comply with this requistion immediately on receipt by you of this letter, my client will institute proceedings against you in the High Court at Bombay on a charge of contempt of Court.

Yours faithfully,

SD/- G.L.PATEL,

Advocate.

Copies to :-

(1) 'Q' -10 Area
(2) CMA Southern Army, Poona
(3) OC 506 Main Supply Depot Deolali
(4) DADS&T 165 Sub Area.

V.M.D.
7-5-56.
4c.

No. 46-Confl.

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 1st February 1945

From

P. M. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs;

To

LT.COL. J.W.Wilson
AAG.

HQ 108 L of C Area
c/o 13 ABPO

Subject:- Bribery and corruption- Manubhai Shivbhai Patel.

Sir,

With reference to your letter No. 11578A, dated the 14th January 1945, on the above subject, I have the honour to state as follows:-

Mr. M.S. Patel had a contract with the Military for the supply of fire-wood. Under term 8(ii) (b) the contract was liable to be terminated if there was bribery on the part of Mr. M.S. Patel. It is now alleged that Mr. Patel did commit bribery and for that offence he has been criminally prosecuted. During the course of the trial, the contract on 25th November 1944 has been rescinded. Mr. Patel has now demanded that the notice of rescission be withdrawn otherwise he will institute proceedings in the High Court for contempt of court. The Remembrancer of Legal Affairs is requested to advise what action should be taken on this notice.

The question is whether the rescission of the contract under the abovementioned clause amounts to contempt of court. The Military Authorities have exercised a right of rescission under a contract. They are not commenting on the criminal case or interfering with the due course of justice or disobeying or interfering with the process of court. If they are not justified in rescinding the contract in this case, the contractor has his remedy in an action for damages for wrongful rescission. The right of rescission is specifically given under the contract and the exercise of that not amount to contempt of court. The notice of rescission should not be withdrawn and further action on the part of Mr. M.S. Patel may be awaited.

Your obedient servant,

Sd/-
1-2-45.
Remembrancer of Legal Affairs.

V.M.D.
7-3-56.
4c.

46

O Contempt of Courts/46

13/8

Submitted.

Please see Mr. Parikh's letter at p.3and D.S.R.D.'s note at p. 2 ante.

There is no substance in Mr. Parikh's contention regarding sanction. He has probably in view provisions of section 197 Cr. P.C. but the sanction envisaged therein is in respect of "prosecutions" and in this case, the Collector was not prosecuted in that sense. Contempt of Court proceedings against the Collector in this case appear to stand on a different footing, as it was taken to punish for its contempt as court of Record.

Sd/-
26-11

S.A.S. I agree: The collector was nor " prosecuted " in a criminal court.

Sd/-
26-11

I agree and suggest the following reply:-

The view taken by Mr. Parikh does not appear to be correct. Sanction of Government would be necessary under section 197(1) Cr. P.C. for prosecuting a Government servan irremovable from office without the sanction of Government when such servant is accused of an offence alleged to have been committed while acting or purporting to act in the discharge of his duty. "Offence" as defined in section 4(0) means any act or omission made punishable by any law for the time being in force. "Any law" may be the Penal Code or it may be any special or local law i.e. law limited to any particular place (see 26 Mad. 607, 615). The High Courts in India are superior courts of Record and the offence of contempt of court and the powers of the High Courts to punish it are the same in such courts as in the superior courts in England, not by the virtue of the Penal Code and the Code of Criminal Procedure but by virtue of the Common Law of England (see 10m C 109).

ARD
11-8

Consequently, the contempt of court will not be an offence with the meaning of section 197(1) Cr.P.C. and no sanction of Government was necessary for prosecuting the Collector of Bombay in the present case for contempt of court.

Sd/- H.T.K.
27-11.

V.M.D./7-5
4c.

D.S.

I have reconsidered the case 26 Mad 607 has no application. I think 10 C 109 is a clear authority for holding that section 197(1) Cr. P.C. will apply to contempt at court cases. The following reply will do:-

In surendor Nath Banerjee V. The Chief Justice & judges of the High Court (10 Cal. 109 at pp 131,132) The privy Council has held:

" The offence of contempt of court is something more than mere defamation and is of a different character. It is an offence which by the Common law of England is punishable by the High Court in a summary manner by fine or imprisonment. That part of the common law of England was introduced in its the Presidency towns when his late supreme courts were respectively established by the character of justice; The High Court in this presidencies are superior Courts of Record , and the offence of contempt and the powers of the High Court for punishing of it are the same there as in this country, not by virtue of the Penal Code for British India and the Code of Criminal procedure code but by virtue of the common law of Enland." Section 197(1) Cr.P. C. which requires the sanction of Govt for prosecuting a Govt. servant irremovable from office without the sanction of Govt, for an offence alleged to have been committed while acting or purporting to act in the discharge of his duty will have therefore no application to cases of contempt of the High Court in which Govt .servants are involved . The view taken by Mr. Parikh does not appear to be correct.

Sd/-R.T.K. 29-11

D.S. I have discussed this case with A.L.R. I agree with his reply may be as suggested by him now.

Sd/- 29-11-46

R.L.A. - As I am handing over charge today my successor should clear with this

Sd/- P.N.M.
30-11-46.

Office of the R.L.A.

In Surendra Nath Banerjee v. The Chief Justice and Judges of the High Court(40 Cal 109 at pages 131, 132) the Privy Council has held:

" The offence of contempt of Court is something more than mere defamation and is of a different character. It is an offence which by the common law of England is punishable by the High Court in a summary manner by fine or imprisonment That part of the common law of England was introduced into the Presidency towns when the late Supreme Courts were respectively established by the charters of Justice. The High Courts in the Presidencies are superior Courts of Record, and the offence of contempt and the powers of the High Court for punishing it are the same there as in this country, not by virtue of the Penal Code for British India and the Code of Criminal Procedure but by virtue of the common law of England" Section 197(1) of the Criminal Procedure Code which requires the sanction of Government for prosecuting a Government servant, irremovable from office without the sanction of Government, for an offence alleged to havebeen committed while acting or purporting to act in the discharge of his duty will have therefore no application to cases of contempt of the High Court in which Government servants are involved. The view taken by Mr. Parikh does not appear to be correct.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D., No. 8929, dated the 10th December 1946,

47

O Contempt of Court/47

13/8

K

It appears that in the booklet called "Girni Kamgarauche Pagar" the Girni Kamgar Union (Red Flag) has tried to cast asperaions on the intergrity and impartiality of Sir Harsidhbhai Divati, President of the Bombay Industrial Court in connection with the pending arbitration proceedings about certain demands made by the Union. The question raised for the consideration of the R.L.A. is whether these asperaions amount to a contempt of court.

"Courts of record have inherent power to punish contempts of their authority whether committed in the face of the court or whether committed vicariously upon the persons of their officers. It was however not thought fit to give power of that character to subordinate courts. The express provisions of section 228 I.P.C. set forth the contempts of inferior courts which are punishable under the Code and it was subsequently held that contempts which would be certainly contempts of a court of record, if they do not come within the provisions of section 228 or any other section, cannot be punished as offences of the character of contempt of court. And it was further held that the High Courts of record cannot punish contempts of inferior courts. Subsequently the contempt of Court Act, 1926 was passed which enabled the superior courts to punishsuchcontempts of the inferior courts notwithstanding that such contempt as is complained of is not an offence (as contempt) against any of the sections of the Indian Penal Code and the object is that as to contempts considered as

ARD
11-6

contempts of the court which are punishable by the Indian Penal Code they shall not be taken cognisance of by the High Court." (See per Courtney Terace C.J. in Jnanendra Prasad Bose V.Gopal Prasad Sen, 12 Patna., 172,177; Ratanlal's Law of Crimes p.523). The Penal Code does not provide against contempt of court committed by the publication of a libel otn of court when the court is not sitting, and neither in Chapter XXI (of 'defamation) nor elsewhere, does it provide for the punishment of a contempt of court committed by the publication of a libel reflecting upon a Judge in his judicial capacity, or in reference to his conduct in the discharge of his public duties (Surendra Nath Banerjee V. The Chief Justice and Judges of the High Court 10 Cal 109, 129,130).

The Industrial Court constituted by Government under section 24 of the Bombay Industrial Disputes Act, 1938 is neither a court of record nor a court inferior or subordinate to the High Court (see section 60). Consequently no action for contempt of court in the present case can be taken against the Bombay Girni Kamgar Union.

Sd/-

Remembrancer of Legal Affairs.

U.H. to P. and S.D., No 67-Cohfl., dated the 18th February 1947.

Sd/-
18-2

LDR.

Sd/-
17-2

V.M.D./7-5.
46.

Office of the R.L.A.

Contempt of Court
Letter written
to trying Magistrate.

It appears that one Mr.K.T. Gaikwad was prosecuted in the Court of the Additional Resident Magistrate F.C. Pandharpur for the offences under clauses (a) and (b) of section 4(1) of the Bombay Prevention of Adulteration Act, 1953.on23-6-47 the accused was convicted on his own plea and fined Rs40. On the same day one Mr.B.P.Umate of Pandharpur wrote a letter to the Resident Magistrate F.C. Pandharpur stating that the business of the accused was not that of a milkman and that he sold milk as a servant of the milch cattle owner and consequently even if there be any adulteration in the milk it must have been by the cattle owners themselves and consequently he should be pardoned. The District Magistrate, Sholapur, has taken objection to the letter written by Mr.Umate requests Government to take suitable action against him for a attempting to interfere with the administration of justice. The R.L.A. is requested to advise whether the letter written by Mr. Umate constitutes contempt of Court.

Lord Cottenham in re. Dyas Bombre (1849) 1 Mac. & G.116) observed:

> "Every private communication to a judge for the purpose of influencing his decision upon a matter publicly before him,always is and ought to be, reprobated, it is a course calculated, if tolerated,to divert the course ofjustice,and is considered and ought, more frequently than it is, to be treated as, what really is, a high contempt of Court."
>
> "A communication to a Judge after the case is over and not containing charges of injustice would not constitute a contempt." (See Tek Chand's Law of Contempt of Court,p.90)

From the facts stated above it is clear that the letter is dated 23-6-1947 on which date the accused was convicted and sentenced to a fine of Rs40/- There is nothing to show whether Mr. Umate's letter was received by the Magistrate before or subsequent to the conviction of the accused. The fact that the Magistrate did not take any action against

Mr. Umate for his letter appears to show that Mr. Umate's letter must have been received by the Magistrate as subsequent to the conviction of the accused. Whether Mr. Umate's letter was received by the Magistrate before or after the conviction of the accused is a question of fact and in the absence of any satisfactory evidence it would be difficult to prove that Mr. Umate's letters attempted to influence the Magistrate. Mr. Umate's letter contains no charge of injustice against the Magistrate. In the circumstances it appears inadvisable to take any action against Mr. Umate for the contempt of Court.

Sd/-
14-11
Remembrancer of Legal Affairs.

Kal.
14.11

U.R. to H.D No. 10853 dated the 15th Nov. 1947.

Y.M.D./7-8
4c.

48

O contempt of courts/48

18/8

K

Submitted.

2. Government proposes to prosecute one Mr.Bhatnagar for the alleged defamatory letter(pp. 1-3 ante) which he wrote on 31st November 1947 to H.M.(Law)complaining about Presidency Magistrates' Courts No. 13 at Worli and No. 6 at Esplanade.

About the 13th Court where Major Shellim is the Magistrate Mr. Bhatnagar writes:-

" In the 13th Court at Worli cases on behalf of the Bombay Municipality are taken up on certain days. One o day I found that the brother of an accused person appear in the Court before Major Shellim at Worli and stated th the accused died in the " Ramdas" disaster. The learned magistrate ignoring this imposed a fine on the person wh appeared to give the information and the poor brother of deceased person was immediately taken in custody by the police only to be realiased on payment of the fine.Th is not only injustice but a crime against public reali Secondly, a few chairs kept inthat Court are all used by the clerks and employees of the Municipality who alon are prominent in that Court on Municipal days. Even the advocates and the lawyers (what to say of the poor parti to cases themselves) have to stand for long hours in the Court. The accused persons and parties are pushed from one side to the other in a most disgraceful manner by th police who rule the Court room and no body is thereto s set these things right. In99% cases the accused persons are goaded into pleading "Guilty" and the court is a machinery for imposing fines on one and sundry. There is no element of justice* and fair treatment to the peopl but a feeling of security for those who figure as partie If an accused knows that the magistrate will impose a he heavier fine if the accused pleaded NOT GUILTY and will impost a lighter fine if he pleaded GUILTY though in fa fact he was NOT GUILTY, there can be no pretence of jus in that Court".

About the 6th court where Mr.Khambata is the Magistr he writes:-

* in the proceedings before it and it was time there was some Government action to guarantee not only justice

" He is trying to figure as the true copy of Mr. Winston Churchill with all his elements of superiority-complex, obstinancy and haughtness towards the parties who appear before him.

These magistrate care a damn for the ministers and for the cause of justice. They are there to show their petty-mindedness and the power which by law they enjoy. Instead of using the powers to ennoble society to prevent crimes, these types of magistrates promote crimes and during the proceedings of the cases give enough harassment to the other party. In fact they take up cudgels on behalf of the complainant and harass the accused persons by the misuse of their powers as much as they can.

In my humble opinion Mr. Khambata should be shifted from the magisterial post and be given some job in the Military and used on duty in Kashmir, Junagadh or Hyderabad. His tone and temper is very necessary in fighting the forces of evil and will be a national asset. In a court of law it is nothing short of something dirty against which you as minister must revolt and remedy things."

The Presidency Magistrates concerned have in their report refuted the charges and have shown that the facts in the said letter are highly misrepresented. The Chief Presidency Magistrate considers that no useful purpose would be served by prosecuting Mr. Bhatnagar for defamation; and that such a course would only give him a handle to pose as a public pririted person and to obtain cheap notoriety and make capital out of these prosecutions.

However, the R.L.A. is requested to advice whether the Presidency Magistrates concerned can sue Mr. Bhatnagar for defamation.

3. Under section 499 I.P.C. whoever by words either spoken or intended to be read or by signs or visible representations makes or publishes any imputations concerning any person intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person is said except in the cases specifically excepted to defame that person.

The section requires three essentials

(1) Making or publishing any imputation concerning any perso-

Office of the R.L.A.

It would not be proper to ask the two Presidency Magistrates to take civil and criminal action against Mr. Bhatnagar for a defamatory attack on them respecting their conduct in the discharge of their duties as judges. In such cases the proper course would be to take action against the offender for contempt. A libel upon a judge is contempt only where it is published with reference to his judicial capacity. In the words of Wilmot :

> " A libel upon a court is a reflection upon the King, and telling thepeople that the administration of justice is in weak or corrupt hands, that the fountain of justice is itself tainted and consequently, the judgments which stream out of that fountain must be impure and contaminated." (See Tekchand's Law of Contempt p 55).

To charge a judge with injustice is a grievous contempt. to accuse him of corruption might be a worse insult; but a charge of injustice is as gross an insult as can be imagined short of that (See R Vs. Starrordshire County Court Judge,1888, 57 L.J.Q.B. 483). All publications which offend against the dignityof the court or are calculated to prejudice the course of justice will constitute contempts (See Oswald, 1091). In the present case, Mr. Bhatnagar addressed the letter to Honourable Minister, Civil Supplies and Legal Departments. That letter would therefore, be deemed to have published the libel offending the dignity of the two Presidency Magistrates and charging them with injustice. Consequently, action can be taken against Mr. Bhatnagar for contempt of court. The two Presidency Magistrates may, therefore, be asked to take necessary steps for action against Mr. Bhatnagar for contempt of court.

'Sd/-
26-6

Remembrancer of Legal Affairs.

U.O. No R.D.Dp. 6033 D/- 26th June 1948.

(Pl. See R.Lal's No 8759 , dated 15-9-48)

submitted.

2. Attention is invited to H.L.A's opinion No. 6033 dated the 28th June 1946. The Chief Presidency Magistrate to whom the said opinion was forwarded by the H.D. for his remarks regarding prosecuting Mr. Bhatnagar for the alleged contempt of Court does not consider that it is worthwile to prosecute Mr.B. mainly for the following reasons:-

(1) That most of the accusations in Mr. Bhatnagar's letter are in the nature of high handed actions of the Magistrates in the course of administering justice and that it is doubtful whether they amount to charging the Magistrates with deliberate injustice as is implied by the quotation in H.L.A's opinion;

(2) that it is doubtful whether a Complaint made to the H.M. (C.S.D.) would amount such excessive libel had he done so in the Press.

(3) that it would mean writing at length to the High Court explaining all facts and sending records to three or four cases and the trouble involved would be out of proportion to the advantage to be gained thereby.

In view of these observations the H.D. proposes to drop the proposal to prosecute Mr. Bhatnagar for contempt of Court. The papers are being shown to the H.L.A. before the proposal is finally dropped.

3. Even though as remarked by the Chief Presidency Magistrate the accusations in Mr. Bhatnagar's letter are in the nature of high handed action in the course of administration of justice, they never-the-less reflect injustice on the part of the Magistr-

concerned and still more offend against the dignity of the Courts.- The statement that Major Sellers' " court is a machinery for imposing Fines on one and sundry" and that suggestion that Mr. Khambatta is unfit for magestrial post and should be transferred to Military would not be so lightly passed off by a Court of Law. " The arraignment of the Justice of the judges in arranging the King's justice, it is an opprobrement of his wisdom and goodness in the choice of his judges and excites in the minds of his people a general dissatisfaction with all judicial determinations and indisposes their minds to obey them. " (Tek Chand on Contempt p. 84) An accusation of injustice is a serious contempt (57 I.A.Q.B. 485). There is therefore the least doubt in holdingsthat Mr-Bhatnagar's letter does amount to contempt of the Courts.

Regarding the view taken by the C.P.M. republication it can be said that though by publication in press the offence would have agrevated the offence some the less by its communication to H.E. C.S.D. it has been published so as to complete the offence of contempt.

The point that the advantage to be gained is negligible as compared with the troubles involved cannot be a ground for not proceeding in the matter especially when the case involves prestige and dignity of the Courts.

The refore it is submitted that there appears no reason to reconsider R.L.A.'s last opinion No.6033 dated 28-6-1946.

Sd/-
25-8

A.L.R. If the Chief Presidency Magistrate himself is not anxious for the notification of honour of his collegues

Judgement recorded by the High Court in Criminal Application No. 846 of 1948 (Under the Contempt of Courts Act), in the case of Mr.B.A.Gujan.

Party (Mr.Gujan) present in person.
The Government Pleader for the Crown.

.....

Coram: Bavdekar and Dixit JJ.

25th August 1948.

Oral Judgment (Per Bavdekar J):-

The opponent in this case was a litigant in the Small Causes Court, Bombay, in a number of proceedings before that Court. It appears that he was unsuccessful, at any rate, in some of them. There upon he made an application to the Inspector General of Police making certain statements and stating in the penultimate paragraph " the effect of the above swindlings has been very injurious to me. If it suits authorities concerned, prompt action alone is indicated in the matter ". In the last paragraph he stated "and I shall be anxious to offer any help and co-operation in the matter. This application was subsequently brought to the notice of the officiating Chief Judge of the Court of Small causes, Mr. Lalkaka. He has now referred the matter to us with a view that we should take action under section 6of the Contempt of Courts Act if we think fit.

A rule has been issued to the opponent to show cause why action should not be taken against him for contempt of the Small Causes Court of Bombay and even though the opponent has appeared before us he has not filed any written statement. He does not dispute, however, the facts which it is necessary for us to find in order to take action under the Contempt of

Courts Act. He admits for example that he made the application which was sent to the Inspector General of Police which is now before us. In that application he mentioned firstly of all a suit which was disposed of by one of the then Judges, Mr. Godkhindi, but that matter will now have to be omitted from the facts upon which action can be based against the opponent for the reason that Mr. Godkhindi had then retired. Then in the second paragraph he referred to certain suits which were disposed of by another Judge who is at present a Judge of the Court of Small Causes, Mr. T.T.Barodawala also. In that paragraph, he did not say any thing which by itself could be said to amount to contempt of the Judge or the Court. But the penultimate paragraph mentioned apparently with reference to all the previous paragraphs that " the effect of the above swindlings has been very injurious to me." It is obvious, therefore, that the opponent what he called attributed swindlings to Mr. Barodawala also. Then in the third paragraph he referred to suits for Rs. 550/- which was dismissed by another Judge, Mr. Prabhan, and in referring to the dismissal stated " which is simply as clear a case of swindling as anyone can come across in any Court of law in any contrary, civilized or uncivilized." In the next paragraph, he referred to the suit which was dismissed by the third Judge, Mr. Malkani., and said with reference to the dismissal, " which meant swindling multiplied." In the fifth paragraph, after referring to the dismissal of a transfer application by the Chief Judge, Mr. Noronha, he said, " the course of all these law suits shows that I have no chance to get injustice in the Presidency Small Cause Court, Bombay, whatever the merits of the case in view of the determined attitude of the said Judges to swindle as above". There cannot be any

doubt in view of what has been stated above that the opponent has been guilty of a gross kind of contempt of the Presidency Small Cause Court of Bombay. And the only cause he shows why action should not be taken against him under section 2 is that he made an application in confidence to the Inspector General of Police. Now, we do not know whether it was in confidence that the opponent made the application to the Inspector General of Police or not. The application that would show that it was made in confidence. But the application was made with a view to take action and if that was the object of the application which was made, it does not make any difference to the grossness of the contempt of the Presidency Small Cause Court, Bombay, though the opponent might have had in mind when he made the application to the Inspector General of Police in regard to what he said of any of the Judges of the Small Cause Court, Bombay, that he was acting in confidence.

The opponent, after the arguments of the Government Pleader who appeared in support of the rule were over, stated that he would apologise to the Small Cause Court for the contempt of which we may come to the conclusion that he has been guilty. But it has been a well established rule that in all such cases the apology must come at an early stage and must not be deferred as late as the time when the opponent finds that he is likely to be sent to jail for the contempt of which he has been guilty. The opponent had appeared before us on Monday. he did not even tender an apology before the learned Government Pleader addressed us his

arguments. In my view, therefore, we should not treat the contempt in which the opponent has been found guilty lightly. The order of the Court will be that the opponent be sentenced to simple imprisonment for a period of six (6) weeks for the contempt of the Presidency Small Cause Court, Bombay.

.....

V.M.D.
4c.

Offict of the R.L.A.

Contempt of Courts Act.

Reported Proceedings against Mr. Bhatnagar.

R.L.A's opinion No. 6033 dt. 28-6-1948.

In his last opinion No. 6033 dated 28th June 1948 the R.L.A. advised that steps should be taken against Mr. Bhatnagar for contempt of court. The Chief Presidency Magistrate in his letter dated 30th July 1948 observe : " It is doubtful whether the matters mentioned by Mr. Bhatnagar amount to charging the Magistrates with doing injustice in the sence of deliberate perversion of justice, which is the sense implied in the quotation given by the R.L.A. .. It is doubtful whether a complaint made to a person in authority like the Honourable Minister would amount to such excessive libel as it would have been if Mr. Bhatnagar had made these accusations in the press or to other parties not connected with the administration of justice. " He advises that no further proceedings for contempt of Court should be taken against Mr. Bhatnagar. In view of this opinion of the Chief Presidency Magistrate the Home Department proposes that the matter may be dropped. The papers are shown to the R.L. A. for remarks.

2. In Criminal application No846 of 1948 a similar point arose. In that case the facts were as follows : One Sujan was a litigant in the small Causes Court, Bombay, in a number of proceedin before that Court. He was unsuccessful, at any rate, in some of them. Thereupon he made an application t the Inspector General of Police making certain statements and stating in the penultimate paragraph " The effect of the above swindlings have been v ery injurious to me. If it suits authorities concerned, prompt action alone is indicated in the matter." In the last paragraph he stated"and I shall be anxious to offer any help and co-operationin the matter." This application was subsequently brought to the

notice of the officiating Chief Judge of the Court of Small Causes, Mr. Talkaka. He referred the matter to the High Court under section 2 of the Contempt of Courts Act. Bavdekar J. before whom the application came for hearing held that there could not be any doubt in view of what has been stated in the application that the opponent has been ~~xxxxxxxxxx~~ guilty of a gross kind of contempt of the Presidency Small Cause Court of Bombay . He further observed :

> "The only cause he shows why action should not be taken against him under section 2 is that he made an application in confidence to the Inspector General of Police. Now, we do not know whether it was in confidence that the opponent made the application to the Inspector General of Police or not. The application would show that it was made in confidence. But the application was made with a view to take action and if that was the object of the application which was made, it does not make any difference to the grossness of the contempt of the Presidency Small Cause Court, Bombay, though the opponent might have had in mind when he made the application to the Inspector General of Police in regard to what he said of any of the Judges of the Small Cause Court, Bombay, that he was acting in confidence."

In view of this decision of the Bombay High Court the point tried to be made out by the Chief Presidency Magistrate that a complaint made to a person in authority like the Honourable Minister would, it is doubtful, amount to such excessive libel as it would have been if Mr. Bhatnagar had made these accusations in the press or to other parties not connected with the administration of justice, would hardly be tenable, provided the application made to the Honourable Minister is made with a view to take action. In the present case no doubt the application made by Mr. Bhatnagar is addressed to the Honourable Nomebody on behalf of the Bombay Government to make an enquiry in the matter. It is, therefore, clear that this application is made to the Honourable Minister with a view to take action in the matter. Consequently the fact that the application is made in confidence with Honourable Minister would be no defence to an action for contempt against Mr. Bhatnagar.

3. In the application the charges made are : "In

90% cases the accused persons are goaded into pleading "Guilty" and the Court (16th Court presided over by Major Shallon at Worli) is a machinery for imposing fines en one and sundry. There was no element of justice in the proceedings before it as it was time there was some Government action to guarantee not only justice and fair treatment to the people but a feeling of security for those who figure as parties. If an accused knows that the magistrate will impose a heavier fine if the accused pleaded "Not Guilty" and will impose a lighter fine if he pleaded "Guilty" though in fact he was not guilty, there can be no pretence of justice in that court. In the 6th Court Mr. Khambatta presides. This gentleman as a magistrate has adopted a most reprehensible attitude towards the advocates, the parties and towards all others who have to attend his Court. He is trying to figure as the twin copy of Mr. Winston Churchill with all his elements of superiority-complex, obstinacy and haughtiness towards the parties who appear before him. These magistrates care a damn for the ministers and for the cause of justice. They are there to show their petty-mindedness and the power which by law they enjoy. Instead of using the power to ensure peace to prevent crimes, these types of magistrates promote crimes and during the proceedings of the cases give enough harassment to the other party." It is clear that this criticism of the two Presidency Magistrates by Mr. Bhatnagar amounts to a gross kind of contempt and it would be impolitic to ignore it. The Chief Presidency Magistrate may therefore be instructed to move the High Court in the matter.

Sd/-
14-9

Remembrancer of Legal Affairs.

J.R. to H.D.No. 8759 dat. Dated 15th September 1948.

H. 14.9

Sd/-
15-9

L.D.R.I. No.11314,
dated 10.9.1948.

Submitted with reference to K.D. note at page 18 ante.

2. It appears that the Kanara News a Kannada Weekly of Kumta Dist. Kanara- commented on some of the Corruption cases pending in Court of the Sub-Divisional Magistrate and some other Magistrates. It alleged that there was no valid sanction for the prosecution of the accused in those cases and hence the whole trial was vitiated. The paper has further suggested that if Government decides to launch fresh prosecutions, Government should first pay whatever the accused have spent in the past. The District Government Pleader, Kanara states that in three cases there were orders of sanction and in two cases no sanction was necessary. He is of the opinion that remarks made by the paper are premature and mischievous and were made out of malice towards him. He has suggested that the Editor of the paper should be called upon to offer an apology and withdraw the remarks. H.D. has raised a question as to whether the Editor can be prosecuted for contempt of Court. R.L.A. is requested to advise.

3. "Generally comments on a cause, written or published or threatened while it is pending and prejudicing or calculated to prejudice any party and particularly paragraphs in newspapers having that effect, are contempts. The question in every case is not whether the publication in fact interferes but whether it tends to interfere with the due course of justice."(Binning on Contempt of Court p.10-21) It is a contempt of court to publish an article in a newspapers on the proceedings of a pending criminal case or civil suit reflecting on the judge jury or parties their witnesses or counsel appearing in the case. It is sufficient if the comments have a tendency to prejudice the fair trial or influence the decision vide Tek Chand on

V.M.D./8-9
4c.

...pt of Court p.150-151).

In the case under consideration the article has a tendency to prejudice the fair trial, the prosecution counsel or the public and influence the decision. Moreover the comments are with respect to cases pending in the Sessions Court. Hence it appears that the Editor can be prosecuted for contempt of Court.

Sd/-
22-9

A.A.S.

The following comments are made in the issue of the "Kanara News" dated 12.7.1948:-

" Arguments in 7-8 cases of corruption have been completed in cases being conducted before the Sirsi Division Sub-Divisional Magistrate and before some other Magistrates. During the course of these arguments it came to light that the Prosecution had not obtained the previous sanction of Govt. for launching them. How did the Govt. Pleader and the Prosecution Officers lose sight of the fact that Govt's sanction is necessary to prosecute the accused in the aforesaid cases ? Have not the energy and expenses of the prosecution and the accused gone to waste owing to the negligence of the aforesaid officials ? If Govt. decides to launch fresh prosecutions, the accused will have to spend huge amounts once again for their defence. Whence are they to bring the amount ? If Govt. decides to launch fresh prosecutions, Govt. should first of all pay whatever the accused have spent in the past."

The question for R.L.A's consideration is whether the above comments constitute contempt of Court.

The Contempt of Courts Act does not define " contempt". As observed by William J in Millerv.Knox " It is defined or described to be disobedience to the Court, an opposing or

V.M.D./ 8-5
4c.

The article no doubt contains a reflection on the Public Prosecutor, Kanara, but it does not appear to have a tendency to prejudice the fair trial or influence the decision of the Court. Consequently no action for contempt of court would be legally feasible.

Attention of the Public Prosecutor, Kanara may be drawn to the recent decision of the Privy Council (Gill v. The King LXV Indian Appeals, p241) wherein their Lordships, distinguishing Koreen's case held that for the prosecution of bribery cases no sanction of Government under section 197 of the Code of Criminal Procedure, 1898 is necessary because the acts committed by such Government servants can not be held to have been done by virtue of their office.

Sd/-
30/9.
Remembrancer of Legal Affairs.

U.R. to H.D., No. 9305 dated the 1st October 1948

LDR.
30

Sd/-
30-9

V.M.D. / 8-5
4c.

49

○ contempt of Courts/49

13/8

Submitted with Ref. to N.D notes at pages 17-18 ante.

2. The facts briefly are:-

The Prant Officer, Dhulia Division, passed an order dt. 19-7-47, appointing Kontik Motiram as the Police Patil of Betawad Mahal, Sari a candidate for the post being aggrieved by the said order filed an appeal in the Court of the Collr., W West Khandesh on 23-7-47. Similarly Dattatraya Fulchand Chaudhari and 3 others who were also candidates for the same appointment filed an appeal on 4-8-1947. While these appeals were pending Dattatraya Fulchand Choudhari published a complaint in the news paper 'Khantanter Bharat' dt. 9.9.47 alleging false production of school certificates by the selected candidate Kontik Motiram and requesting investigation in the matter. There was also a passage in the issue of 'Zang' dt.5-9-47. from a resident of Betawad referring to the false production of school certificate by Kontik Motiram and alleging him liable for criminal prosecution and also admitting the filing of two or four appeals. The querist asks Govt. If it would enquire into the matter.

The D.G.P. T.N. who was consulted states that the publication of both passages is in regard to a matter which is subjudice to the knowledge of the person ventilating the alleged grievances. The contents in both the passages imputs production of false evidence by respondent Kontik Motiram in the Court of the Prant officer. This casts an aspersion on the respondent and prejudices the fair decision of the question at issue. Indirectly both the passages aim at the appellate authority taking a particular view and thereby interferes with the fair trial of the issues in the matter. The D.G.P. is therefore of the view that the publications in question are objectionable and amount to contempt of Court. He has relied on authorities. But as the contempt of Court has been committed in respect of the Revenue Court, the High Court will not interfere in view of provisions laid down in sections 3(1) of the Contempt of Court Act can punish only -

A.I. 9/8

can be taken for punishing the contempt of Court.

The H.D. is of the view that if the view expressed by the D.G.P.is correct an amendment will have to be inserted to bring the revenue courts within the purview of the Contempt of Courts Act. The H.D. requests R.L.A. to advise whether the view expressed by the D.G.P. is correct.

The question for R.L.A's consideration is whether the Revenue Court is a subordinate Court withing the meaning of section 2(1) of the Contempt of Courts Act, 1926.

3. Under section 77 of the Bombay Hereditary Officers Act an appeal from an order of the Collector will be to the Revenue Commissionar and Govt. alone has the power of revision the High Court can not interfere.As pointed out by the D.G.P. the High Court of Judicature has no place in the scheme of the Watan Act and therefore it appears that the High Court will not be entitled in law to take cognizance of a contempt committed in respect of Revenue Court that is not subordinate to it. The view taken by the D.G.P. is correct.

Sd/-
19-1

A.A.S.

Under Sec.5(2) of the Civil Procedure Code, a " Revenue Court " means a court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under the Code to try such suits or proceedings as being suits or proceedings of a civil nature. The Collector hearing an appeal under Sec. 77 of the Bom. Hereditary Offices Act against the decision of the Prant Officer appointing a Police Patel does not a function as a 'revenue court' and much less a court subordinate to H.C.(see Sects 74 and 79). The view taken by the D.G.P., West Khandesh that the Coal. functions as "revenue Court" does not appear to be correct. Attention is invited to the case of People's Own Provident & General Insurance Coy. V. Gurachary a (47 Bom.L.R.p.852) and R.L.A.'s No.4698 dt.7.5.47.

The view expressed by D.G.P. W.K. appears to be correct.

Sd/-
25-1

Office of the R.L.A.

Contempt of Courts Act, 1926.

Sec. 2(1).

The Collector exercising his powers under section 77 of the Bombay Hereditary Offices Act, 1874, is not subject to the superintendence and control of the High Court and consequently is not subordinate to The High Court within the meaning of section 2(1) of the Contempt of Courts Act, 1926. No action would therefore be legally feasible under the Contempt of Courts Act.

Sd/-
28-1

Remembrancer of Legal Affairs.

U.H. to H.D., No. 1093 dated the 29th January 1949.

V.M.D.Y 8-5
4c.

The District Magistrate, Ahmednagar, writes :

" The experience in Mr. Satha's case however shows that when my affidavit, which was filed in the High Court, was served on the applicant it was translated and published in the local newspaper 'Inquilab'
After the publication of the transkation of my affidvit, systematic attempts were made by the sympathisers of Mr. Satha to collect counter affidavits from their followers which either denied or falsified the facts mentioned in my affidavit. Not only this, but the applicationfrom some villagers were obtained and published in the local newspapers denying the participation of Mr.Satha in any of the activities mentioned in my affidavit. Affidavits of other persons were also filed to disprove my affidavits and I was called upon to make counter affidavits to answer the subsequent affidavits concocted by the interested persons."

He, therefore, suggests that the High Court may, if possible, be moved through the Registrar to take serious notice of the publication of Court documents in local press with a view to concocting other affidvits, and that the High Court may be requested to stop publication of Court documents before the case is decided in the Court. He further suggests that in similar proceedings commenced by Mr. Bhapkar he should not be called upon to file an affidvit, but that the Government Pleader should be asked to argue the case on the strength of the copies of the reports available to him, or in the alternative, his affidavit, if at all it is to be filed, should be limited to the reports of his subordinates and the D.S.P. only, and that the remaining points raised on behalf of the detenu be argued by the Government Pleader. Although the proceedings commenced by Mr. Bhapkar have terminated and the detention was upheld, the case had been referred to the R.L.A. for advice upon the points raised by the District Magistrate.

2. As the detaining authority the District Magistrate ought to make an affidavit if the

allegations made in the petition or otherwise requise elucidation .He cannot decline to make an affidavit for fear that it may be published in the newspapers and evidence thus concocted to meet it.

3. The publication of an affidavit in pending criminal proceedings would ordinarily amount to contempt of court. and it would be feasible to move the High Court for taking action. The law has been very clearly laid down in this matter by our High Court in the case of In re. M.K.Gandhi, 22 Bombay Law Reporter p. 368, where following the English precedents it was held that printing even without comments and circulating the brief pleadings petition or evidence of one side only is contempt. Publishing an affidavit in pending proceedings would thus amount to contempt. See also Halsbury's Laws of England Vol. 7 p.28; Oswald on Contempt p.96; Tichborne v. Mostyn (1867) L.R.7 Eq.p.55; and Tek Chand on Contempt of Court pp180-182. The Privilege attached to the publication of reports of judicial proceedings is not available where even in criminal proceedings the contents of documents filed in such proceedings are published if they are not brought up in open court. See Gatley on Libel and Slander pp 346-347. Unless, therefore, the affidavit was openly read out in court, the publication would be actionable for contempt of court; and in a proper case the High Court can be moved either by the District Magistrate himself or through the Government Pleader. If, however, the affidavit is read out in Court, newspapers would be at liberty to publish the contents thereof, and no action would be feasible.

4. The record does not show whether the affidavit was published after it was read out

in Court and whether any comments were made while publishing it. In any case, having regard to the distance of time, it would not be advisable to commence proceedings for contempt.

Sd/-
28-3

Remembrancer of Legal Affairs.

U.R. to H.D.(Special) No. 806 dated the 28th March 1949.

Please correct four copy accordingly

Sd/-
28-3.

V.M.D./8-5

4c.

L.R.R.I.No. 10593
Dt. 13.7.1949.

Submitted.

Please see the Govt. of India letter, No 4/6/49 Judicial dated the 8th April 1949 at pp. 21-22 ante. In B.G. Horniman. In re. 46 Bom. L.R. 94, it has been laid down by the Bombay High Court that each High Court has inherent powers to punish contempt of itself; but no other High Court has any power to dealwith contempt of another High Court. If a High Court considers that a person has committed contempt of that Court although the contempt may have been committed outside the jurisdiction of that Court, it can deal with that person if he were within its jurisdiction. But there is no power in any High Court to arrest for contempt of Court a man outside the jurisdiction of that Court. This position of law allows a man to commit contempt of Court with impunity by remaining outside the jurisdiction of Court, and it had been found that even particularly offensive cases are going unpunished. It is felt, therefore, that this lacuna in the law should not be allowed to continue and accordingly it is proposed to amend the law on the point. Two cases are envisaged. The first type of case is where a person commits contempt of a High Court within whose jucisdiction he normally resides. He and flees outside. It is suggested that in such cases, there should be provision for legal process which will enable him to be brought before the High Court. The second type of case is where a person commits contempt of a High Court outside the province in which he normally resides. In this connection it is suggested by the Govt. of Madras that such a person should be brought before the High Court of his province on the Complaint of the High Court of which he has committed contempt. The Govt. of India, however, consider that in such cases , it would be best to invoke the jurisdiction of the Federal Court on the complaint of the Central Govt. Accordingly the Provincial Govts. have beenasked to favour the

of India with their views on the two following proposals:-

(a) When a person commits contempt of Court within the province in which he normally resides and flees outside the province, should there be provision for bringing him before the High Court of his Province?

(b) Where a person commits contempt of a High Court outside his own province, should his own High Court be empowered to proceed against him on the complaint of the other High Court or alternatively should, in such cases, the Federal Court be given jurisdiction on the complaint of the Central Government.

The Govt. of Bombay have consulted the High Court, Bombay and tTheir Lordships have stated that the Law should be so amended as to confer upon every High Court the jurisdiction, power and authority to commit for contempt any person residing within its jurisdiction in respect of contempts of any other High Court or Courts subordinate thereto, provided such other High Court moves the High Court in whose jurisdiction the person committing the contempt resides. Further the High Cohrt is not in favour of the Federal Court being given jurisdiction as suggested by the Govt. of India (vide Registrar's letters at pp. 19and 29 ante)

The right to punish for contempt of Court is an extraordinary right and Superior Courts have claimed and exercised this jurisdiction for centuries if not from time immemorial. In ancient times the Judges asserted their right on the ground that disobedience to their order or dispespect to their office was an insuot to the King. In modern times that power is claimed in order to safeguard the interest of the public. The power to punish for contempt has been vested in the Judges not so much for their personal protection as for the safety of the public in whose interest it is that dignity, decency and decorum should be preserved in Courts of Justice Wilmot thought that a Court of Justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its Care would be an anomaly which could not be permitted to exist in any civilized community. Without such protection Courts

of Justice would soon lose their hold upon the public respect, and the maintenance of law and order would be rendered impossible. Hence it is that the summary power of punishing for contempt has been given to the Courts "to keep a blaze of glory around them and to deter people from attempting to render them contemptible in the eyes of the public." (see Tek Chand at pp. 186-187). Such being the nature of this jurisdiction every High Court must be empowered to commit for its contempt any person, residing or found within the Dominion, even if he is not residing or found for the time being within its ordinary jurisdiction. The writ of the Court must be allowed to run throughout the Dominion, if dignity of the High Courts is to be maintained. To require one High Court to make a complaint to another High Court for taking action for its contempt would not be inconformity with that dignity. Such a procedure would reduce the High Court to the level of a common complainant. As observed by Chief Justice Kent in an American Case,(Yates v Lansing (1810) 5 Johnson. N.Y. 282,) when ever we subject the established Courts of the land to the degradation of a private prosecution, we surrender their importance and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon every thing sacred in society and to overthrow those institutions which have hitherto been deemed the best guardians of Civil liberty (Tek Chand, p. 190-191). In order to keep up the dignity of the High Court, therefore, it must be given power to issue process against the contemner wherever he may be in the Dominion, for being brought up before it for trial. This power must be exercisable irrespective of whether or not the contemner ordinarily resides within its jurisdiction. If the Federal Court is invested with

power as proposed by the Govt. Of India, that would also subordinate the High Courts to the Federal Court in this respect. This does not ~~xx~~ appear desiravle. The High Court must be able to exercise the jurisdiction without the intervention of any third party, either of equal status like another High Court or of superior status like the Federal Court. If the Law is modified as proposed here, it would restore the old legal position which was supposed to exist before the desision in 46 Bom. L.R. was given.

Sd/-
15-7

A.S.R.

I am in favour of giving ~~jurisdiction~~ jurisdiction to the federal Court to deal with the contemner in such cases, for the federal court being the highest tribunal its decisions besides having finality will lay down the lane for the guidance of all High Courts while the proposal if the Bombay High Court to give ~~jurisdiction~~ to the High Court withing whose jurisdiction the contemner is found will not serve any purpose beyond bringing the contemner to book

Sd/- R.T.K.
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R.L.A.

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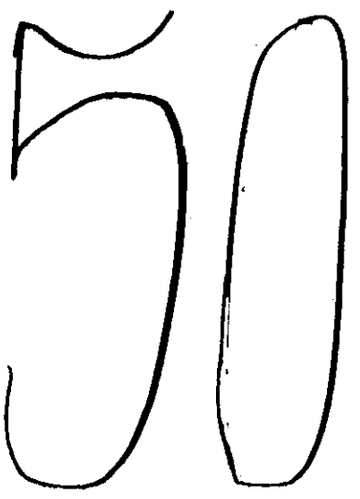
Having regard to the object and the nature of the jurisdiction of punishing contempts of courts, it would be inadvisable in my opinion to require any High Court to make a complaint to another High Court or to require that the contempt of a High Court should be made punishable by the Federal Court on the complaint of the Central Government. The reason for punishing contempts of courts in the summary manner by the Court itself was very forcefully stated as follows by Chief Justice Kent in the American case of Yates v. Lansing (1810) 5 Johnson N.Y. 282) which was cited in In Re Motilal Ghose (45 Calcutta 169 at p.239): " Whenever we subject the established courts of the land to the degradation of private prosecution, we subdue their importance and destroy their authority." That is all the more so in the case of contempts of a High Court. On principle, therefore, I feel that provision should be made enabling any High Court to punish contempt of itself wherever committed in India and to bring before it the culprit, whether he be ordinarily within its jurisdiction or not. With that modification, I agree with the view taken by the Bombay High Court as far back as 1946 and now reiterated by them. Another reason why the jurisdiction of the Federal Court should not be invoked at the initial stage is that thereby we will be depriving the person concerned of his right of appeal. It is now well established by Privy Council decisions that the Privy Council has a jurisdiction to entertain appeals where the appellant has been committed for contempt of any court, including a High Court; and that jurisdiction was very effectively exercised in the case of Parashuram Dotaram Shamdasani v. King Emperor (Law Reports, Appeal Cases, 1946 p 264) which incidentally illustrates that High Court Judges may not always properly exercise the jurisdiction. When the time comes for the Privy Council

to drop out of the Judicial system of this country some provision will have to be made for investing the Federal Court with powers of appeal in such matters. Therefore, it would be undesirable that the original a action against the contemner should be taken by the Federal Court itself as that would make appeal impossible. Finally, I would like to point out that, if the desired change is to be brought about by an amendment of the Contempt of Courts Act, 1926, the whole position should be reviewe and powers for the High Court to punish contempt of itself with the above additional provisions should be given and also a regular appeal provided to the Federal Court; at present the power of the High Court to punish contempt of itself is not derived under the Act, nor is any statutory provision made for appeal.

Sd/-
opc. 27-7-49.
Remembrancer of Legal Affairs.

U.H. to H.D. No. 8315 dated the 22nd July 1949.

aV.M.D./9-5
4c.



0 contempt of courts/50

Office of the R.L.A.

The matter published in the letter is undoubtedly calculated to prejudice the fair trial of the cases which were then in progress. That being so, the publication would prima facie amount to contempt of Court. The letter may be brought to the notice of the Magistrate trying the case for such action as he deems necessary against the newspaper in respect of its publication.

Sd/-
3-11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 15430 dated the 4th Nov. 1950.

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24/11/50

The allegations against Shri V.R.Amble, Resident Magistrate, Haliyal, appearing in the Kanara News, are that-

(1) if parties are late in attending the court even by a few minutes, the Magistrate inflicts fine on them;

(2) the Police Prosecutor, Shri Nadkarni, prepares charges (which it is the duty of the Magistrate to frame himself) and suggests questions to be put to the accused and types judgments for this Magistrate;

(3) it is hinted that judgments are also written by the Police Prosecutor, Shri Nadkarni.

These allegations, in particular allegations (2) and (3), are calculated to bring the Resident Magistrate into contempt and lower his authority as the presiding officer of his court. It is feasible, therefore, to take action against the newspaper under the Contempt of Courts Act. As the D.M. has found that these allegations are baseless, it may not be proper to ask Shri Amble to launch criminal proceedings against the newspaper for defamation, which course also would be feasible.

Sd/-
20-12

R.L.A.

V.M.D. /9-5
4c.

Office of the R.L.A.

On the assumption that the allegations are baseless, the proper course in this case is for the Magistrate to iniciate action against the newspaper for contempt of Court.

Sd/-
23-12
Remembrancer of Legal Affairs.

U.R. to H.D., No 13244 dated the 27th December 1950.

V.M.D. /2-5

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๐ Contempt of courts /57

Office of the R.A.A.

The remarks about which opinion is invited by the Home Department whether they amount to contempt of court are:

"As we do not possess at present the copy of the judgment in which the Police Officials have been acquitted we cannot write anything about it to-day. We only say that this judgment cannot satisfy the people. This judgment has once again shown that people do not always get true justice within the legal framework of a capitalist state."

The remarks are not against the Court or the Presiding Officer of the Court but against the Legal framework of the state do not amount to contempt of the Court. It would be relevant to quote the definition of contempt of Court by Lord Russal C.J.Reg. Vs. Gray(1900) 2 Q.B. 36 (at page 40).

"Any act done or writing published calculated to bring a court or a judge of the court into contempt, or to lower his authority,is a contempt of court. That isone class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due course of justice or the lawful process of the courts is a contempt of court."

Sd/-
12-6

Remembrancer of Legal Affairs.

U.R. to E.D., No. 9211 , dated the 13th June 1951.

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11-8

V.M.D./9-8
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LEGAL DEPARTMENT

Contempt of Courts.

An article in "Sarvodaya"

H.D. wants H.L.A. to advise whether a particular artic in the weekly 'Sarvodaya' dated 28th December 1950 amounts to contempt of Court and whether it would be worthwhile to take action against the editor, printer and publisher of the paper on that ground.

The article points out certain defects in the administration of criminal law. The defects pointed out are --

(1) Release by the Magistrate of an accused without sufficient security with the result that the accused absconds.

(2) Difficulties in the cancellation of the bail bond in case of an absconding accused, the difficulties arising from the fact that the bail bond has been taken by one Magistrate and the case has thereafter been transferred to another Magistrate without studying the previous history of the case.

The article then gives two instances of the above type and purports to drew the attention of the Government to the fact that by reason of these defects in the administration of criminal law the property and lives of the public are endangered at the hand of anti-social elements.

The article is a reasonable factual criticism of certa aspects of the administration of criminal law with a view to get the defects removed. In the words of Lord Russel (Reg.vs. Grey (1900) 2 Q.B.36) " Judges and Courts are alik open to criticism and if reasonable argument or expostulation is offered against any judicial act as contrary tolaw or the public good, no court could or would treat that as contempt of court." And in the words of Lord Atkin(Ambard vs. Attorney General of Trinidad 36 Bom.L.R.681 P.C.), " whether the authority or position of an individual judge or the due administration of justice is concerned no wrong is committed by any member of the public who exercises the

Ordinary.....

ordinary right of criticising in good faith in private or public the public act done in the seat of justice.§

The article in question is covered by these judicially recognised principles and cannot be said to amount to contempt of court.

Sd/-

Additional Secretary to Government.

U.R. to H.D. No. 10678 , dated the 10th July 1951.

V.R.D./9-5

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R.I.No 19985/28-9-51.

Office of the R.L.A.

The question for consideration is whether the articles dated the 19th May 1951 and 2nd June 1951 in the Marathi Weekly "KOLABA SAMACHAR" bearing on the Gangal Murder are such as to amount to contempt of Court.

Shri T.K.Gangal of Kohli is alleged to have been murdered on the 7th February 1946. At first three persons namely, Annaji Laxman Khavi,(2) Gunya Laxman Kola and (3) Dama Kalu Patil who were tenants of Shri Gangal were arrested, but as there was not sufficient evidence against them they were released. A fresh investigation by the Criminal Investigation Department also has eventually closed. A third investigation took place at the instance of Shri H.K.Gangal, the brother of the deceased, but the evidence disclosed was not found to be such as to justify charge-sheeting any persons. Then Shri H.K. Gangal filed a private complaint against Shri Hari Narayan Deshmukh and others charging them with the murder. The Resident Magistrate, Karjat, before whom the complaint was filed after considering the papers of the investigation came to the conclusion that there was not sufficient ground for proceeding and therefore he dismissed the complaint under section 203 Criminal Procedure Code on 15th May 1951. The abovementioned two articles appeared in the Kolaba Samchar after the dismissal of the complaint.

The article in the issue of the 19th May 1951 refers to the fact that the matter has been investigated thrice but the police did not think there was sufficient material to prosecute. It then refers to the private complaint of the brother of the deceased and states:-

> "It is difficult to say whether it was just on the part of the Magistrate to dismiss the suit (complaint) by examining only the papers of the Police Inquiry and without giving any opportunity to the complainant to put forth his evidence. If after hearing the complainant the Magistrate had found that the evidence adduced by him was inadmissible then he would have been justified in dismissing the case without committing it to the Sessions Court. We sincerely think that the Magistrate should not have played a second fiddle to the Police."

The article then goes on to congratulate Shri Hari Narayan Deshmukh on his escape but suggests that it is his duty and the duty of the Congress to which he belongs to remove the stain on his character.

The only objectionable passage in this article is the sentence "We sincerely think that the Magistrate should not have played a

second fiddle to the Police." When that sentence is read in the context of what immediately precedes it, it will be seen that what was meant was that the Magistrate should not have based his conclusions merely on the facts disclosed in the police investigation but should have tried to obtain the requisite information independently of the police investigation by allowing the complainant to lead evidence before him. When, therefore, the offending passage is in its context it cannot be said that it tends to bring the authority and the administration of law into disrespect or it is a scurrilous or scandalous attack on the Magistrate. It does not amount to a contempt of court.

The article in the issue of the 2nd June 1951 refers to the dismissal of the complaint by the Magistrate and states that the people feel that thereby a great injustice has been done. It congratulates Shri Gangal, the brother of the deceased, for deciding to go in revision to the High Court. It then proceeds to criticise the Congress and lastly requests the District Superintendent of Police and the District Magistrate to see that Shri Gangal is protected from bad elements. The only passage in the article which may be objected to as reflecting on the administration of justice is the statement that " people here feel that the Resident Magistrate has done a great injustice by dismissing on 15th May, under section 203 ofthe Criminal procedure Code the case filed in his court by Shri Narayan Gangal." This statement does not amount toan contemp of Court.

It is therefore not feasible to prosecute the Editor of Kolaba Samachar for contempt of Court in respect of the above two articles

Sd/-
4-10

Remembrancer of Legal Affairs.

U.R.to R.D., No.15387, dated the 5th October 1951.

V.M.D./9-5
4c.

R.I.No.21469/17-10-51.

OFFICE OF THE R.L.A.

It cannot be said, on the facts of the case, that what Shri Pathi did was calculated to bring the Court of the Third Class Magistrate, Panvel, or the Presiding Magistrate Shri Abdul Ajij Patel into contempt or to lower his authority. Nor can it be said that it was calculated to obstruct or interfere with the due course of justice. Therefore Shri Pathi has not committed contempt of Court.

Sd/-
22-10

Remembrancer of Legal Affairs.

U.R. to H.D. No. 16704 dated the 22nd October 1951.

V.M.D./9-5
40.

R.I.No.M1664/19-10-51.

Legal Department.

The question for B.L.A's consideration is whether proceedings for contempt of court can be taken against Shri G.L. Patil for his comments in a newspaper on the preliminary notice issued by the Sub-Divisional Magistrate while taking action under section 48 (3) of the Bombay District Police Act, 1890.

2. It has been held by the B.L. A.in& his opinion No. 1431, dated the 20th February 1946 that a Sub-Divisional Magistrate in passing an order of externment under section 46(1) of the Bombay District Police Act, 1890, acts in an administrative capacity and not in a judicial capacity.
A similar view has been taken by the High Court in a Criminal Application No. 370 of 1949 to the effect that the orders made by a Sub-Divisional Magistrate under section 46(3) are executive orders and not judicial orders (vide p.33, H.D. File 3063/ S-T-II). It is, therefore, clear that no offence of contempt of court is committed by commenting on the proceedings and no action for contempt will lie.

Sd/-

Additional Secretary to Government.

U.R. to H.D. No.17480 dated 8th November 1951.

V.M.D./9-5
46.

R.I.No.686-Confl/3-11-51.

Legal Department.

The view taken by the Home Department is correct. The letter of Ghvi Ratilal Jethalal dated 2nd September 1951 is addressed to the Collector of Amreli in his executive capacity. The communication therefore does not amount to contempt of Court.

Sd/-

Additional Secretary to Government

U.H. to H.D. No. 17915. dated the 12th November 1951.

V.M.D. /9-5.
40.

I.D.R.I.Nr.20161 dated 28-9-51.

Submitted.

The facts of this case are as follows :-

Bai Avalbai and Bai Ratabai, daughters of Shri K.R. Desai, were owners of certain lands in Navsari taluka and one Shri Dayalji Shamji Chunawala was their tenant who was holding the lands under a ten years' lease. The owners sold the lands to one Ramabhai Nanchhodbhai who in turn sold them to Shri Bhikhabhai Nathabhai by a registered sale-deed dated the 3rd Oct. 1948. Shri Bhikabhai, on becoming owner of the lands, informed the tenant that he would like to recover possession on expiry of the lease on 2nd March 1950. On 8.2.1950 he also applied to the Mamlatdar for possession of the lands on the ground that he wanted them for self-cultivation and that the tenant was in arrears of rent for two years, and the Mamlatdar by his order dated the 17th April 1950 granted him the possession. The tenant Shri Dayalji thereupon went in appeal to the Collector who set aside the Mamlatdar's order by his order dated the 16th May, 1950. Against the Collector's order, the landlord preferred a revision application to the Bombay Rev. Tribunal on 29-5-1950. While this application was pending with the Tribunal, Dr. P.C.Solanki, L.M.S., sent a letter to Shri Kirchandani, Commr. N.D. [illegible] requesting him to do justice to Shri Dayalji, the tenant. In the letter Dr. Solanki made serious allegations against Shri Mahida, the then Mamlatdar of Navsari in the following terms :

"I learn that Mr. Mahida received a very substantial sum of money from the Kunbi party to take away the possession of the lands from Mr.Dayalji Shamji Chunawala by force and in his absence without giving a year's notice. On return Mr.Dayalji sent an appeal

to the Collector Mr. Deshpande of Surat. The Collector after thoroughly investigating the details ordered the Mamlatdar Mr. Mahida to give back the possession of the lands to Mr. Shamji but instead of obeying the orders of the Collector he actually handed over the possession of the lands to the Kunbi. The Collector's orders were forwarded to you Sir for your final orders but the Mamlatdar Mr. Mahida whose palms are thickly greased by the Kunbi landlord intervened and requested you to stay your orders."

The allegations made by Dr. Solanki against Shri Manida are considered by the Collector of Surat to be 'Wanton and irresponsible'. The President of the Bombay Rev. Tribunal also considers that apart from false allegations, the writing of a letter to a Member of the Tribunal which is calculated to interfere with the course of justice is a serious transgression and that suitable notice must be takenx of such transgression. The President is, however, not sure what form of action would be legal and expedient and whether the Tribunal is competent to take action for contempt. The papers are, therefore, referred to R.L.A. for advice in the matter (P.19 ante)

2. It is clear that Dr. Solanki had written the letter to Shri Mirchandani with a view to influence him in his decision in the case before the Tribunal. It is a contempt of court to try to influence a Judge. Lord Cottenham in re. Dyce Sombre (1849) 1 Mac. & G. 116) observed :

"Every private communication to a Judge for the purpose of influencing his decision upon a matter publicly before him,always is and ought to be, reprobated, it is a course calculated, if tolerated, to divert the course of justice, and is considered and ought, more frequently than it is, to be treated as what it really is, a high contempt of Court."

Shri Mirchandani to whom the letter was addressed by Dr. Solanki not acting as a Judge. He was a member of a Tribunal which, though it exercises judicial powers, cannot be considered to be a court in the strict sense of the word (cf.R.L.A.'s opinion No3993 dated the 12th April 1949). In the circumstances, it would not be possible to bring the communication within the mischief of contempt of courts Besides although it is doubtful whether the High Court having wh the letter

Legal Department.

Contempt of Court.

Shri Kirchandani to whom the letter was addressed by Dr. Solanki was not acting as a Judge. He was a member of a Tribunal which, though it exercises judicial powers, cannot be considered to be a court in the strict sense of the word(cf.R.L.A's Opinion No. 3993 dated the 18th April 1949). In the circumstances, it would not be possible to bring the communication within the mischief of contempt of Court. Besides although it is doubtful whether the High Court having now superintendence over the tribunal under Article 227 of the Constitution can take action for contempt of such Tribunal, when the letter was written the Bombay Revenue Tribunal was not a Tribunal subordinate or inferior to the High Court and the High Court had no superintendence over it. It is not also a court of record. In the circumstances, no action for contempt of court would be feasible (cf. R.L.A's Opinion No 67-Confl.dated 18th February 1947).

The letter, however, contains allegations of bribery and an allegation of bribery against a Government servant amounts to defamation. A prosecution by Shri Mahida for defamation under section 499, Indian Penal Code, for making such allegations against him would therefore be possible (cf. R.L.A's opinion No.6484, dated the 4th September 1948). It would also be possible to prosecute Dr. Solanki under section 182 of the Indian Penal Code.

Sd/-

Additional Secretary to Government

U.H. to F.D.No.16823 dated , 13th October 1951.

V.N.D./9-5
4c.

52

O. Contempt of courts /52

13/8

R.I. 1796 A / 25/1/52. 131.

Office of the R.L.A.

The R.L.A. is requested to advise whether action for contempt of court can be taken against the newspapers 'UJALA' and 'BASUMATI' for the articles at pp.1 and 9-13 ante.

2. In His Excellency the Governor of Bengal in Council vs. Tusharkanti Ghosh,(60 cal.603), it is held that criticism of a capital sentence case pending confirmation by the High Court may amount to contempt although no appeal has been preferred at the date of such criticism. Laying down this rule, the learned judges who sentenced the Editor observed: "We think it right to say that all comment in the press, whether by way of approval or disapproval, of the judgments of courts of session or of commissioners in capital sentence cases, made pending their disposal by this court, is reprehensible, and may entail most disagreeable consequences, on those responsible for it." In the present case the criticism was published within about a week after the judgment was delivered and while the sentence is pending confirmation by the High Court and, therefore, the newspapers in question have prima facie rendered themselves liable to punishment for contempt of court. But any action in that behalf must be taken by the High Court. The articles may merely be brought to the notice of the High Court through the Government Pleader, High Court.

Sd/- P.M.Lad.
2-2

Remembrancer of Legal Affairs.

21-5-52

U.O. to H.D.(Poll). No. 138 - Confl. dated 4th February 1952.

V.M.D./9-5
4c.

U.R.H.D. 835 dt. 19-1-52

RI.2962/12-2-52 135

OFFICE OF THE R.L.A.

The R.L.A. is requested to advise whether there is a strong case for taking action for contempt of court in respect of the two articles in Kannada Nadu dated the 14th August 1951 and 28th August 1951 and whether Government should initiate the proceedings.

2 Both the articles were published when appeals were pending . Publication of comments on a case which is pending trial in a court is contempt of court if the comments are such as are likely to prejudice the administration of justice. In the article in the issue dated 14th August 1951, the writer has criticised the sentence as being heavy. To say that a sentence is "cruel" is contempt but it would be no contempt to remark that the sentence is 'severe'. The word 'cruel' means that the person awarding the sentence takes pleasure in inflicting punishment, but the word 'severe' is not used in any bad sense (Tek Chand on Contempt, p.877). The article merely characterises the sentence as heavy (भारी सिक्षा) and in the circumstances, it would not come within the mischief of the offence of contempt. In the article in the issue dated 28th August 1951, however, the allegation is that the conviction has been based on the testimony of the police which is worthless. This is a grossly gross contempt of the Court. To suggest in a newspaper article that evidence intended to be used in a prosecution, which is either pending or is plainly contemplated, has been obtained by improper means and is unreliable, or to suggest that admissions of the accused have been improperly obtained, is conduct calculated to interfere with the due course of justice (Government Pleader, Bombay vs. Shankar Javadekar, 40 Bom.L.R.73). It would in these circumstances be possible to take action for contempt in respect of the second article.

As regards the question who should initiate the proceedin it appears that it would not be desirable for Government to initiate them. The proper course would be for the Magistrate himself to report the matter to the High Court(cf. R.L.A's

V.N.D./9-5

opinion

opinion No.18244, dated the 27th December 1950 and also

No. 138 -Confl., dated the 4th February x 1952.)

36/- P.M.Ead.

28-2

Remembrancer of Legal Affairs.

U.R. to H.D.No.2840 dated the 21 st February 1952

V.M.D./9-5-
4a

C. B. L. B H A T N A G A R

Co-perative Insurance Building.
Sir P.M. Road Fort.

BOMBAY.

NOV. 21, 1947

Dear Syt. Dinkarrao Desai,

I am compelled to address this letter to you in connection with the administration of certain courts of the presidency magistrates in Bombay and in particular I would invite your urgent attention to the Presidency Magistrates Court No. 13 at Worli and the Court No8 at Esplanade. I am figuring as an accused in Court No13 and therefore you should kindly bear this in mind although I am not dealing in that connection with any thing relating to my own matter. In the other court, i.e. No 8th I am in no way concerned and have no matter before it. Therefore you will see that I am not an interested party.

2. In the 13th Court at Worli cases on behalf of the Bombay Municipality are taken up on certain days. On one day I found that the brother of an accused person appeared in the Court before Major Shollom at Worli and stated that the accused died in the " Ramdas" disaster. The learned magistrate ignoring this imposed a fine on the person who appeared to give the information and the poor brother of a deceased person was immediately taken in custody by the police only to be realeased on payment of the fine. This is not only injustice but a crime against public feeling. Secondly, a few chairs kept in that Court are all used by the clerks and employees of the Municipality who alone are prominent in that Court on Municipal days. Even the advocates and the lawyers (what to say of the poor parties to cases themselves) have to stand for long hours in the Court. The accused persons and parties are pushed from one side to the other in a most disgraceful manner by the police who rule the Court room and no body is there to set these things ritht. In 99% cases the accused persons are goaded into pleading " Guilty ". and the court is a machinery for imposing fines on one and sundry. There is no element of justice in the proceedings before it and it was time there was some government action to guarantee not only justice and fair treatment to the people but a feeling but a feeling of security for those who figure as parties. If an accused knows that the magistrate will impose a heavier fi fine if the accused pleaded NOT GUILTY and will impose a lighter fine if he pleaded GUILTY though in fact he was NOT GUILTY, there can be no pretence of justice in that Court.

V.M.D./10-5
4c.

3. In the 8th Court Mr Khambatta presides. This gentleman was a magistrate previously in Bombay and had been sent off on some duty to the Governmentof India. On his return to Bombay from New Delhi, this gentleman has adopted a most reprehensible attitude towards the advocates, the parties and towards all other who have to attend his Court. He is trying to figure as the true acopy of Mr. Winston Churchill with all his elements of superiority complex obstinacy and haughtiness towards the parties who appear before him.

In a matter where an accused was lying ill with a malaria at Muttra U.P. and a regular medical certificate was produced in his Court from a M.B.B.S. doctor the magistrate ordered the issue of a non.bailable warrant against the accused. In a matter where the accused was present in Court and had gone down for a few minutes for some call of nature, the magistrate threatened that unless the accused appeared in 15minutes he will order the issue of non-bailable warrant against the accused. In that matter the accused tendered through counsel two post-dated cheques for Rs.3000/- dated 22.8.1947 and the other for Rs 1800/- dated 1.9.1947 ~~and~~ The complainant agreed to accept the same in settlement. The learned magistrate stated that he did not believe in cheques and cash must be produced. The case was adjourned to the 26th of August 1947. All of a sudden after the matter was adjourned to the magistrate again remembered about the accused and ordered the issue of a warrant of arrest against the accused in the sum of Rs.6000/- At 12.30 the accused appeared and as soon as counsel had ~~a~~ stated that the accused was present in Court, the magistrate said he will take the accused in custody. These are only two examples out of the ~~ha~~ hundreds the learned magistrates is creating every day. These magistrates care a damn for the ministers and for the cause of Justice. They are there to show their petty-mindedness and the power which by law they enjoy. Instead of using the poser to ennoble society to prevent crimes, these types of magistrates promote crimes and during the proceedings of the cases give enough harassment to the other party. In fact they take up cudgels on behalf of the complainant and harass the accused persons by the misuse of their powers as much as they can.

I would urge upon you to appoint some body on behalf of the Bombay ~~Gaxarnm~~ Government who ~~should~~watch watch proceedings in the above ~~two~~two courts and should report the tone and temper of the learned magistrates to gavarn ko government . In my humble opinion Mr. Khambatta should be shifted from the magisterial post and be given some job in the Military and used on duty in Kashmir, Junagadh or Hyderabad. His tone and temper is very necessary in fighting the forces of evil and will be a national asset. In a court of law it is nothing short of something dirty against which you as a minister must revolt and remedy things.

This letter is not an interference in the work of the Courts. It is in the nature of an exposure of the dirty system that prevails and I am sure you will take such action as you deem necessary.

Beggars cannot be choosers and the only limit of my power or of the power of any other person in this so called free and independent country is to write, protest and complain and it is in the hands of gentlemen of your position to help the public or to throw them into further ~~wilderness~~ wilderness.

Yours very truly,

Sd/-

21.11.1947.

Sd/-

The Hon'ble Syt. Dinkarrao N.Desai,

Law Minister,

Bombay

V.M.D./10-5-56. 4c.

Mr. C.B.L. Bhatnagar,

In this application Mr. B. dasak describe the mal practices practised by the Presidency Magistratis of Courts No.3 and 8. He also describes atrocious acts of there magistrates.

These are matters for H.M. H.D.

Sd/-
27-11

CpP.M. report . H.M. H. D.

Sd/- M.R.D.
3-12
Home Department.

V.M.D./10-8
4c.

Submitted with ref. to H.M.'s note dated the 3.12.47 at p. 1 ante.

2. It is not usual to call for reports in such matters from Judicial officers except through the High Court. A copy of Mr. Bhatnagar's letter may be therefore be sent to the High Court with a request to call for a report from the C.P.M. and forward it to Government with such remarks as their lordships may like to offer.

Draft put up.

(Thro A)

Sd/-
10-12-47

Sd/- D.R.K.
11-12-47

Sd/-
11-12-47

D.S. Please get a report from C.P.M. as directed by H.M.

Sd/-
11-12

V.M.D./10-5
40.

No.0/10119/50363-B
Home Department.
B.C. Dec.1947.

To

The Registrar , High Court, A. S.
Bombay.

Subject :- Courts of Presy. Magts.
Admn. of the ------
Mr. Bhatanagar's
letter. re:

Sir,

I am directed to forward herewith a copy of a letter from Mr. C.B.E: Bhatnagar, dated the 21-11-47. and to request that with the permission of the Hon. the C.J. and Judges, you will be so good as to call for a report from the C.P.M., Bombay on this allegations made in the letter ~~wkkx~~ and to forward it to Government with such remarkes as their lordships may deem fit to offer.

Y.O.S.

O.C.
Dy. Secy. to the Government
of Bombay , H.D.

Sd/-
10-12-47

Sd/- 11-12-47

V.M.D./10-5
4c.

Below a letter from Mr. C.S.L. Bhatnagar, dated the 21-11-47.

No.o(10119)/50363-B.

H.D.

Bo.Dt. 12th Dec.1947.

Forward with complaints to the Chief Presidency Magistrate. Bombay for report

O.C. Sd/- 13-12-47.

for Secy. to the Govt. of Bombay

H.D.

Sd/- 12-12

A.S.(city P.C.)

Sd/- 13-12

V.M.D./10-5
4c.

Express letter

To

The Chief Presidency Magistrate,

Bombay.

Subject:- Courts of Presidency Magistrate.

Administration of
Mr. Bhatnagar's letter

No.o(10119)/50365 -B Date 20th Jan. 1948.

Please refer to G.E., H.D. No o(10119)/50365-B dated 15-12-47 and state urgently when a reply there to may be expectes

O.C.
For Secretary to the Government of Bombay
Home Department.

Sd/- A.S.(city F.C.)
20-1

Sd/-
21-1-48.

Sd/-20-1-48

V.M.D./10-5
4c.

No. 730/38 OF 1948.

FROM

Oscar H. Brown, Esqr., Bar-at-Law,

CHIEF PRESIDENCY MAGISTRATE.
BOMBAY.

The Secretary to the Govt. of Bombay
Home Department.

CHIEF PRESIDENCY MAGISTRATE'S COURT:

ESPLANADE BOMBAY. 9th Feb., 1948.

Sub:- Courts of Presidency Magistrate's
Administration of the------
Mr. Bhatnagar's letter.

Sir,

With reference to your letter No. 0(10119)/50365-B, dated the 20th January 1948, I have the honour to inform you that I have called for a report from Magistrates mentioned in-- Bhatnagar's letter and I shall send a reply immi--ediately after receiving reports from the-- Magistrates concerned.

Your obedient servant,

Sd/-

Chief Presidency Magistrate,
Bombay.

V.M.D./10-5
4c.

Confidential:

No. 4 of 1947,
Bombay, 29th December 1947.

From:

K.J. Khambata, Esquire, M.A., LL.B., Advocate,

Presidency Magistrate, 8th Court, Esplanade,
Bombay.

To

The Chief Presidency Magistrate,
Bombay.

Sir,

With reference to the verbal request made by you day before yesterday, for a report on the letter of one C.B.L. Bhatnagar dated 21st November 1947 , addressed to the Hon'ble Mr. Dinkarrao M. Desai, I have the honour to state as follows:-

1 The said Bhatnagar is not such a dis-interested party so far as my court is concerned, as he makes himself out to be. The statement that in the 8th Court he is in no way concerned, is a misleading statement. He was as accused in a case before me. That case was filed by one J.J. Saxena against him in your Court on 3.7.47. You had ordered a-- summons returnable before my court, and also an immediate which he was alleged to have committed criminal breach of trust. As the accused in that case,he appeared before me on the 8th July 1947. ~~[illegible]~~) see proceedings in my Court case No 456/8 of 1947. I now recollect that he attended the Court and tried to show off his importance, but did not produce the typewriter. It was explained to him that the order of the Chief Presidency Magistrate for the production of the typewriter must be first obeyed. He became very-- cantankerous. He was given time to go and produce the machine immediately. He then put in a long application(which is also in the records) in which also he has tried to show his importance by stating, inter alia, that he was engaged upon the publication of a weekly called " Law and Order"

besides other publications; and he suggested that he should be allowed to keep the typewriter in his office as otherwise the work in his office would suffer. Probably that was the only typewriter in his office. The Court declined to entertain any such application unless the machine was first produced. He then went away and did come back and produce the machine. After hearing him I ordered that the machine should be kept in Court until further orders. I remember that he appeared to have become very much annoyed at the Court's Order, and left the Court fretting and fuming.

2. This case was eventually transferred to the Court of Mr. Muranjan, along with a number of other cases. Mr. Muranjan has disposed of the case on 28.11.1947 . He held that the-- matter was civil one and ordered the accused to be discharged The first sentence of the learned Magistrate's judgment is illumination: " The complainant and the accused appear to be at one time friends who have now for some reasons fallen out, and each is trying to out -do the other in cleverness."

3. Bhatnagar refers to two cases in my court, but he has not given the numbers of these cases, nor the names of the parties though he appears to have made himself singularly interested in them to the extent even of quoting the figures and dates of cheques which were tendered in settlement in one of the cases. It was with some difficulty and with the expenditure of not a little time of myself and my Judicial Clerk that I have been able to hunt out the cases he refers to & I am putting up apparately, as annextures A and B of this letter, the observations which I have to make in respect of each of these cases.

4. It will be seen from the annextures that it is an entire misrepresentation to have made a x sweeping statement of the nature made by Bhatnagar in his letter, and to suggest that the court has thoughtlessly issued an order for a non-bailable warrant in spite of the medical certificate. It

will also be seen that the further sweeping statements with regard to the other case are also untrue,and there has been a deliberate misrepresentation and exaggeration.

5. The case papers of the case against Bhatnagar and of the 2 cases referred to in the annextures are put up herwith. If so,required, certified copies of the proceedings will be furnished.

Your obedient servant,

S/- K.J. Khambatta.

Presidency Magistrate,
8th Court, Bombay.

V.M.D./10-5
4c.

Annexture 'A'
Case No. 653/6/1947

In this case, in which the accused are persons from Mathura, U.P., it is ture that an order for a non-bailable warrant was issued against the accused No.1, but all the other facts and circumstances arex suppressed by Bhatnagar. The facts are that that case was filed in the C.P.M's Court on 11.1.47 for alleged infringment of copyright. The learned C.P.M. ordered a Notice to issue upon the accused. It seems that the complainant had considerable difficulty in serving the notices upon the accused. Eventually, however, the learned C.P.M. converted the notice into summons on the 21st May 1947.

2. Thereafter the case was transferred to my Court and it came up before me for the first time on 30th July 1947. It was found that accused No.1, though served, was absent. (Nos.2 and 3 are his brothers, but they had not been served,) Accused No.1 sent a telegram saying that as the service was very late, he could not come. The case was, therefore, postponed to 8.8.47.

3. On8.8.47, accused No.1 was again absent. It was ascertained that accused Nos. 2and 3 were also creating difficulties in the way of the service of summonses, and therefore bailable warrants were issued against all three accused in the sum of Rs.2000/- with one surety in the like amount, and the case was postponed to 11th September 1947. On 11th September accused No.1 was again absent although it appeared that the warrant against him had been executed. Accused Nos. 2 and 3, however, surrendered themselves in Court and were enlarged on the bail as orders, and the case was postponed to 2nd October 1947.

4. The 2nd October 1947 was suddenly declared to be a public holiday on account of Mahatma Gandhiji's Birthday, the case was postponed and was posted on the board of 14th October 1947.

5. On the 14 th October 1947, the accused No.1 was again absent. As the matter was already 9~~months~~ months old, I acceded to the request of his Advocate Mr. Bhat and exempted him from personal attendance on that day and proceeded with the case. (Mr. Bhat had produced a medical certificate dated 12.10.1947 to the effect that accused No.1 was suffering from malarial fever, and

could not move out for at least a fortnight). The case being part heard, was postponed to 28.10.1947, a sufficiently long time being given to enable accused No. 1 to attend the court,

6. On 28.10.1947 accused No.1 was again absent, and again Mr. Bhatt applied for a postponment and produced a medical certificate from the same doctor again stating that he was in an unfit state of health and could not move out for a fortnight. This time the application was stoutly opposed by the learned Advocate for the complainant. He pointed out that not on a single occasion had accused No.1 remained present in Court in spite of Notice, Summons and a bailable warrant. The Court therefore, after hearing both the parties, made an order as follows :

> "Accused No. 1 has not even once remained present in Court since the begining of the case before this (8th) Court. The case is already over 9 months old. I am not disposed to granting any further postponments on medical certificates which have become too frequent. Last time the certificate stated that a fortnight's time would be required, and this was given.
>
> Issue a non-bailable warrant for the arrest of accused No. 1 and notice on his surety."

The case was postponed to 11th November 1947.

7. It is the general practice of our Courts that in such cases if the accused appears and offers some plausible explanation for his absence, the warrant is cancelled, or at any rate a fresh bail order is made; and if the accused No.1 had come to the Court even on 11th November, the same thing would have been done. What the accused actually did was that one of the 3 brothers accused, No.3, quietly made a transfer application to the Chief Presidency Magistrate. On the 11th November, their Advocate Mr. Bhatt informed the Court that a transfer application was made and would be heard on the 19th November, and the case was postoponed to 27th November 1947.

8. On the 27th November, Mr. Mudnany appeared with Mr. Bhatt for the accused and informed the Court that the

transfer application had been rejected, and that the case had therefore to go on, but that accused No 2 was not present and that he had sent a telegram that his train was running 8 hours late. Accused No. 1 was also not present and the warrant issued against him had not been executed. The case was postponed to 10 December 1947. The non-bailable warrant ordered on 28.10.1947 to issue was actually issued on 28.11.47, after giving accused No. 1 two further opportunities of appearing in Court.

9. It appears that though a postponement was taken on the ground that accused No. 2's train was running late, actually a revision application had been made to the High Court, on the sly, against the order of the Chief Presidency Magistrate rejecting the transfer. The High Court, however, summarily rejected this application,(as I now find out), on 8.12.47.

10. Finding at last that the non-bailable warrant had gone to Mathura, and there was now no escaping , Accused No.1, surrendered in Court on the 16th December 1947. In spite of all his previous lapses, which had delayed the hearing of the case for 11 months, I again acceded to his Advocate's request and released him on a fresh bail in the sum of Rs. 1000/- with a fresh surety, in lieu of which he deposited Rs. 1000/- in cash.

The case now stands adjourned to 30th December 1947.

Sd/-
Intd. K.J.K.
20.12.47.

V.M.D./10-5
4c.

Annexture 'B'
Case No.687/S of 1947
of the 8th Court.

This case was also originally filed before the learned C.P.M. on 20th February 1947 when he ordered summons to issue. It was subsequently transfered to my Court and it came up before me for the first time on the 5th August 1947. On that day the accused remained absent but his counsel Mr. C.B. Kulkarni appeared and applied for time to settle. It is entirely absurd to suggest that it was mentioned to the Court that he had gone to answer a call of nature and yet the Court issued a warrant. No such thing was ever mentioned to the Court. The accused was simple absent without any excuse. A bailable warrant was therefore issued. Shortly afterwards the accused did turn up, and on Mr. Kulkarni's application the order for the issue of warrant was cancelled. There is nothing unusual in this procedure, as it happens everyday in our Courts. Accused persons somethmes deliberately remain absent, but, when they come to hear that a warrant has been issued, they promptly, turn up, In the present case, after the accused turned up, a discussion took place about a settlement, and the claim was settled for Rs. 4800/-. The accused offered two cheques, one for Rs. 3000/- and the other for Rs. 1000/- , both post dated 22nd August.

2. It is correct that I expressed my opinion that if the accused wanted to settle he should rather bring cash. It is common knowledge that cheques from accused persons prove mostly valueless. However in the present case as the complainant was prepared to accept the cheques I had no objection. The case was postponed to 26th August to see if the cheques were realised.

It is utterly false and absurd to suggest that after the case was postponed I remembered about the accused and ordered a warrant to issue. The warrant was ordered first, because the accused was absent , and it was cancelled because he turned up; and thereafter the discussion as to the settlement and and the giving of the cheques took place; and then the case was postponed.

3. On the 26th August 1947 the case was dismissed because the cheques had been realised, and the complainant did not appear in Court.

Intd. K.J.K.
20-12-47

V.M.D./10-5
4c.

D.O. No. 1 of 1948
Bombay, 18th February, 1948.

Dear Mr. Brown,

Referring letter dated 21.11.47 by Mr. Bhatnagar to Mr. Desai, the statement made in the first half of para 2 that the brother of an Accused person who had died was fined, is entirely false. I do not recollect any such instance having occured in my Court.

As regards the second half of the para, I must inform you that Mr. Bhatnagar has been prosecuted under the Municipal Act and that the trial which is proceeding before me, has been prolonged by him by repeated absences and requests for long postponments on personal grounds. His first application for transfer of the case was rejected by ~~xxx~~ you. His second-filed after a bailable warrant had been ordered against him as he was absent-is pending for nearly 2 months- due to his absence.

I devote a certain number of afternoons in the months to Municipal Cases and it is not unusual to have as many as 150 cases on an afternoon. A certain amount of congestion and inconvenience is caused to parties due to the small size of the court room . There are 8 chairs in the Court but it is incorrect to say that all are used by clerks and employess of the Municipality. The Municipal prosecutor or Prosecutors as the case may be, occupy chairs but so do members of the bar. A Chair is always available tocounsel appearing in a case that is being tried. There is also one bench behind the row of chairs, and one at the side. ~~Xxx~~ Two benches are kept in the passe age outside the Court room. These are occupied by litigants and members of the public. No more need be said by me on this point.

That " Accused persons and parties are pushed from one side to the other in a most disgraceful manner by the Police who rule the Court" is entirely false. I have never noticed any such thing. It must be remembered however, that P.Cs on Court duty are responsible for prisoners and persons fined by the Court. I have no fault to find with the manner in which this responsible

duty is discharged by the P.Cs.

The allegation that " in 99% cases Accused persons are goaded into pleading guilty" is also entirely false. I ensure that the charge is clearly explained to the Accused in each case. No person is ever " goaded" into pleading guilty and there is no question of heavier fines being imposed on persons who plead not guilty and lighter fines on those who plead guilty. All accused persons are given a fair trial and I have always taken great pains to appreciate and understand the defence raised by an Accused, person.

I may add that Mr. Bhatnagar has frequently addressed long letters by post to the Court making wild allegations which have absolutely no truth or substance in them. It appears that he is in the habit of doing this.

Yours sincerely,

Sd/- A.A. Shellim.

V.M.D./10-5
4c.

Below Home Department's endorsement No. O(10119)/50363-B dated 12th December 1948, forwarding a letter from Mr. C.B.L. Bhatnagar.

No. 963/16 of 1948.

Esplanade Police Court,

Bombay, 24th February 1948.

Returned with compliments together with letter from Mr. C.B. L. Bhatnagar, and copies of reports from the Presidency Magistrate 8th and 13th Courts , Bombay.

It appears that the facts stated by Mr. C.B.L. Bhatnagar are highly misrepresented.

Sd/-

Chief Presidency Magistrate,
Bombay.

V.M.D./10-5
4c.

Home Department.

Submitted with reference to G.E.No.o/(10119)/50363 dated 12.12.47.

2. In his letter, dated 21.11.47, Mr. C.B.L. Bhatnagar makes the following allegations against Messrs Shellem and Khambatta, Presidency Magistrates Court No13 Worli and court No 8 at Esplanade respectively.

3. About Mr. Shellem Mr. Bhatnagar states:-

(i) that the brother of an accused person appeared in the court and stated that the accused died in the "Ramdas" desaster. The magistrate ignoring this imposed fine in the person who appeared to give the inrormation and the near brothers of the accused person was immediately taken into custody by the Police only to be released on payment of fine.

(ii) that cases on behalf of Bombay Municipality are taken up on certain days.

(iii) that a few chairs kept in that court are all used by the clerks and employees of the Municipality who alone are prominent in that court on Minicipal days, even advocates and lawyers have to stand for long hours in that Court.

(iv) that the accused persons and parties are pushed on one side to the other in a most desgraceful manner by the Police.

(v) that 99% cases the accused persons are goaded into pleading " Guilty " and the court is a machinery for imposing fines in one and sundry.

In this connection please see Mr. Shellems explation at pp 33-35 ante. It will be seen therefore that (i) is in entirely false.

As regards (ii) and (iii) are Shellem devotes a certain number of afternoon in the month to Municipal cases and it is not unusual to have as many as 150 cases on an afternoon. A certain amount of exgertion and inconvenience is caused to the parties due to the small size of the court room.

There are 8 chairs but it is in correct to say that all are used by clerks and employees of the Municipality. Municipal prosecutor or prosecutors accupy chairs but so do members of the bar. A chairx is always available to counsel appearing in a case that is being tired.(iv) is entirely false. The Magistrate has no fault to findx with his manner in which the responsible duty is discharged by the Police courtbles the allegation at is entirely false. The charge is explained to the accused in each case and the accused persons are give a fair trial.

4. About Mr. Khambatta, Mr. Bhathagar allegs:-

(i) that be adopts a most reprehencible attitude to wards the advocates parties and towards allowed who have to attend his court.

(ii) that in a matter where an accused lying in was/with Malana of Muttra and a regulars mc. was produced in his court, the Magistrate ordered the issue of a non-bailable warrant against the accused.

(iii) that in a matter where the accused was present and had gone down for a few minutes for call of nature, the Magistrate did threatened unless the accused appeared in 15 minutes he will order the issue of a non-bailables warrant against the accused. k the Magistrate did not behave in cheques tendered by the accused and insistes on cash being produced.

In this connection, please see Mr. Khambatta's letter dated 20-12-47 and the ennexures A&B there to the allegation at (i) seems to be an out come of Mr. Khambatta's refusal to entertain an application by Mr. Bhatnagar for being allowed to keep the type-writer in despute unless and until the machine was first produced.

The allegations at (ii) and (iii) have been fully explained in annexures A & B . It will be seen that the allegations are untime and that Mr.Bhatnagar has delibretely and is misrepresented and exaxx exggerated the facts.

The views expressed at A. B.& C. of the petition do not indicate ablance of mind. We may agree with the C.P.M. that the facts stated by Mr Bhatnagar are highly misrepresented the petitions may be informed that the facts are entirely misrepresented and allegations made are without any foundation.

V.M.D./11-5

(Through A)
Sd/- D.D.K. 22-3-48

On going through the explanations submitted by the Presidency Magistrates very carefully, I am of opinion that the allegations against themare maliciously false and unwarranted.

It appears Mr. Bhatnagar is not after all a disinterested citizen in these court matters as he tries to make himself to be. He has figured as accused before both the magistrates and before one of them his bearing were haughty.

Mr. Bhatnagar may therefore be informed that after making careful enquires Government has found that his allegations are not true.

Sd/-
24-3

If the allegations are maliciously false and unwarranted. Why should Mr. Bhatnagar not be prosecuted defamation ?

Sd/- M.R.D.
24-3

V.M.D. /11-3
4c.

Home Department

The accompaning draft letter to the C.P.M. may issue

Sd/-
6-4-43.

D.S.

Sd/-
7-4

V.M.D./11-5
4c.

NO. 2197 OF 1948.
16

FROM

Oscar H. Brown, Esquire, C.I.E., O.B.E., Bar-at Law,
CHIEF PRESIDENCY MAGISTRATE AND
REVENUE JUDGE, BOMBAY:

TO

A. S. Bam, Esquire, I.C.S.,
Deputy Secretary to the Government of Bombay,
Home Department.

CHIEF PRESIDENCY MAGISTRATE'S COURT:

ESPLANADE, BOMBAY 4th May, 1948.

Subject:- Letter from Mr. C.B.L. Bhatnagar.

Sir,

With reference to your letter No G/10119-B dated the 8th April 1948, I have the honour to state that I have consulted my colleagues Messrs. K.J. Khambata and A.A. Challia, Presidency Magistrates, and I concur with their views that no useful purpose will be served by launching one or more prosecutions for defamation against Mr. Bhatnagar. Such a course would only give him a handle to pose as a public spirited person and to obtain cheap notoriety and make capital out of these prosecutions. The said Magistrates have personally got no animosity against him; and we do not feel ourselves justified in asking Government to spend public time and money over prosecuting Bhatnagar. It is quite enough satisfactions for the Magistrates concerned, and for me as their Chief, to know that Government are satisfied that the allegations made by Mr. Bhatnagar are maliciously false and unwarranted.

I may take this opportunity of mentioning that the Chief Presidency Magistrate is always read to investigate abuses in all Courts which come or are brought to his notice. Now and again he gets letters about one thing or another, and he immediately investigates to see how far there is any truth in the grievances which require to be remedied. What the Chief Presidency Magistrate and his colleagues resent, however, is personal attacks made behind their back, since Magistrates cannot enter into a controversy.

Your obedient servant,

Sd/-
Chief Presidency Magistrate,
Bombay.

V.M.D./11-5
4c.

Home Department (B)

Submitted with ~~ke~~ ref. to H.M's note at p. 42.

2. In view of C.P. M.'s remarks overly , we may inform Mr. Bhatnagar as proposed by Dy. Secy at A p.42.

(Through A Br.)

Sd/- D.R.K.
22-5-48.

Discussed.

H.M. would like R.L.A. to advise whether the P.M's concerned can Sue Mr. Bhatnagar for defamation.

If they can, they will be asked to take civil and criminal proceedings, government providing the necessary legal assistance. (C.P.M. to be consulted before this is done)

Sd/-
28-5

U.O.R. to R.L.A. of the 29-5-48

V.M.D./11-5

4c.

Office of the R.L.A

It would not be proper to ask the two Presidency Magistrates to take civil and criminal action against Mr. Bhatnagar for a defamatory attack on them respecting their conduct in the discharge of their duties as judges. In such cases the proper course would be to take action against the offender for contempt. A libel upon a judge is contempt only where it is published with reference to his judicial capacity. In the words of Wilmot:

> "A libel upon a court is a reflection upon the King, and telling the people that the administration of justice is in weak or corrupt hands, that the fountain of justice is itself tainted and consequently the judgments which stream out of that fountain must be impure and contaminated." (See Tekchand's Law of Contempt p. 85).

To charge a judge with injustice is a grievous contempt. To accuse him of corruption might be a worse insult; but a charge of injustice is as gross an insult as can be imagined short of that (See R Vs. Staffordshire County Court Judge, 1888, 57 L.J.Q. B. 453). All publications which offend against the dignity of the court or are calculated to prejudice the course of justice will constitute contempts (See Oswald, 1091). In the present case, Mr. Bhatnagar addressed the letter to Honourable Minister, Civil Supplies and Legal Departments. That letter would, therefore, be deemed to have published the libel offending the dignity of the two Presidency Magistrates and charging them with injustice. Consequently, action can be taken against Mr. Bhatnagar for contempt of court. The two Presidency Magistrates may, therefore, be asked to take necessary steps for action against Mr. Bhatnagar for contempt of court.

Cd/- P.M.Lad.

26-6-48.

Remembrancer of Legal Affairs.

~~X.R.xxxxxx~~5.

U.R., to H.D., No. 6033 Dated 28th June 1948.

~~J.H.D./11-5~~

Home Department.

Submitted with ref. to our notes at p. 46 ante.

2. For the reasons explained in his note, dated the 28-6-48, the R.L. A. considers that it would not be proper to ask the two Presidency Magistrates to take civil and criminal action against Mr. Bhatnagar for a defamatory attack on them respecting their conduct in the discharge of their duties as judges. He however considers that the proper course in this case would be to take action against the offender for contempt of court. If the course suggested by the R.L.A. is approved the C.P.M. may be asked to instruct the two Magistrates to take necessary steps for action against Mr. Bhatnagar for contempt of court.

Sd/-
5-7-47.

The Chief Presidency Magistrate's remarks at page 45 ante were with reference to press prosecution for defamation. Proceedings for contempt of court, however, would not be open to the same objections as prosecution for defamation.

Mr. Bhatnagar is well known for making irrespon-sible comments of this kind against all and sundry. It seems necessary in a habitual case like this to take some deterent

action. We may therefore forward the R.L.A.'s opinion to the Chief Presidency Magistrate and enquire whether he would advise proceedings for contempt of court being taken against Mr. Bhatnagar.

Sd/- D.R.D.
H.M.
7-7

V.M.D./11-5
4c.

Letter

To

The Chief Presidency Magistrate.
Bombay.

Subject:- Letter from Mr. C.B.N. Bhatnagar.

No. o/10119-B. Dated 14th July 1948.

Ref. correspondence ending with your letter No. 2197/16, dated the 4-5-48.

2. Enclosed is a copy of R.L.A's opinion No. 6033, dated the 28-6-48. Please state whether in view of the opinion expressed by the R.L.A. you would advise proceedings for contempt of court being taken against Mr. Bhatnagar.

O/C

for Secretary to the Government of
Bombay. H.D.

Sd/-
15-7-48
Dy. Secy.

V.H.D./11-5
4c.

No 3797 OF 1948

FROM

Oscar H. Brown, Esqr., C.I.E., Bar-at-Law.,
CHIEF PRESIDENCY MAGISTRATE AND
REVENUE JUDGE. BOMBAY:

TO

D.S.Bakhle, Esqr.,O.B.E., I.C.S.,
Secretary to the Government of Bombay,
Home Department.

CHIEF PRESIDENCY MAGISTRATE'S COURT:
ESPLANADE, BOMBAY. 30th July 1948.

Subject :-Letter from Mr. C.B.L.Bhatnagar.

Sir,

With reference to your letter No.0/10119 B dated the 14th July 1948 in the above matter, whilst I am obliged to the learned Remembrancer of Legal Affairs for his opinion, a copy of which has been annexed to your letter, I adhere to the view previously expressed im my letter No.2197/16 dated the 4th May 1948 that no useful purpose will be served by taking further proceedings against Mr. Bhatnagar and that any proceedings, if taken, would only give him a handle to obtain notoriety.

I am glad that the R.L.A. agrees with me that it would not be proper to ask the two Presidency Magistrates to take civil or criminal action for defamation against Mr. Bhatnagar. But to take proceedings for contempt of Court implies that the Courts concerned will have tomove the High Court to take action under the Contempts of Courts Act, 1926. This means writing at length to the High Court explaining all the facts and sending to it the records of three or four cases. The trouble that it would entail to the Magistrates here and to the High Court would in our view be out of proportion to the advantage to be gained by the proceedings. Moreover, it is doubtful whether the matters mentioned by MrMr. Bhatnagar amount to charging Magistrates with doing injustice in the sense of deliberate perversion of justice , which is the sense implied in the quotation given by the R.L.A. Most of his accusations are

more in the nature of those for alleged high-handed actions in the course of administering justice rather than of deliberate injustice. It is therefore doubtful whether, after all the trouble has been taken, the High Court would necessarily take the view that there was a legal contempt of Court. As regards "Publication", also, it is doubtful whether a complaint made to a person in authority like the Honourable Minister would amount to such excessive ~~kh~~ libel as it would have been if Mr. Bhatnagar had made these accusations in the press or to other parties not connected with the administration of justice. All things considered, therefore, I would not advise proceedings for contempt of Court being taken against Mr. Bhatnagar.

Yours faithfully,

Sd/-

Chief Presidency Magistrate,
BOMBAY.

V.M.D./11-5
4c.

Home Department.

Submitted with ref. to our letter No G/10119B, dated the 14-7-48.

2. For the reasons explained in his letter, dated the 30-7-48, the C.P.M. is not in favour of taking proceedings for contempt of court also. He also doubts whether such proceedings with succeed as he is of the opinion that Mr. Bhatnagar's allegations would not amount to charging the Magistrates with doing injustice in the sense of deliberate perversion of justice which is the sense implied in the quotation given by the R.L.A. In the C.P.M'S~~xxxx~~ view Mr. Bhatnagar has charged the Matistrates with high-handed actions in the course of administering justice. It appears that the C.P.M. is rather fighting shy of taking any action against Mr. Bhatnagar. However, the R.L.A. may see these papers U.O. for favour of remarks on the view taken by the C.P.M. in the matter.

Sd/- 11.8.48.
Decy. Secy

In view of C.P.M'S ~~xxxxx~~report the matter may be dropped.

Sd/-
11-8

U.O.R. to R.L.A. to 11-8-48.

V.M.D./11-8
4c.

Office of the R.L.A.

Contempt of Courts Act.

Reported Proceedings against Mr. Bhatnagar.

R.L.A's opinion No. 6033 dt. 28-6-1948.

In his last opinion No. 6033 dated 28th June 1948 the R.L.A. advised that steps should be taken against Mr, Bhatnagar for contempt of court. The Chief Presidency Magistrate in his letter dated 30th July 1948 observes : " It is doubtful whether the matters mentioned by Mr. Bhatnagar amount to charging the Magistrates with doing injustice in the sense of deliberate perversion of justice, which is the sense implied in the quotation given by the R.L.A. .. It is doubtful whether a complaint made to a person in Authority like the Honourable Minister would amount to such excessive libel as it would have been if Mr. Bhatnagar had made these accusations in the press or to other parties not connected with the administration of justice. " He advises that no furhter proceedings for contempt of Court should be taken against Mr. Bhatnagar. In view of this opinio of the Chief Presidency Magistrate the Home Department proposes that the matter may be drooped . The papers are shown to the R.L.A. for remarks

2. In Criminal application No. 846 of 1948 a ~~xnk~~ similar point arose. In that case the facts were as follows: One Sujan was a litigant in the Small Causes Court, Bombay, in a number of proceedingsbaf before that Court. He was unsuccessful, at any rate, in some of them. Thereupon he made an application to the Inspector General of Police making certain statements and stating in the penultimate paragraph "the effect of the above swindlings has been very injurious to me . If it suits authorities concerned, prompt action alone is indicated in the matter". In the last paragraph he stated" and I shall be anxious to offer any help and co-operation in the Matter." This application was subsequently bruought to the

notice of the officiating Chief Judge of the Court of Small Causes, Mr. Lalkaka. He referred the matter to the High Court under section 2 of the Contempt of Courts Act. Bavdekar J. before whom the application came for hearing held that there could not be any doubt in view of what has been stated in the application that the opponent has been guilty of a gross kind of contempt of the Presidency Small Cause Court of Bombay. He further observed :

> "The only cause he shows why action should not be taken against him under section 2 is that he made an application in confidence to the Inspector General of Police. Now, we do not know whether it was in confidence that the opponent made the application to the Inspector General of Police or not. The application would show that it was made in confidence. But the application was made with a view to take action and if that was the object of the application which was made, it does not make any difference to the grossness of the contempt of the Presidency Small Cause Court, Bombay, though the opponent might have had in mind when he made the application to the Inspector General of Police in regard to what he said of any of the Judges of the Small Cause Court, Bombay, that he was acting in confidence."

In view of this decision of the Bombay High Court the point tried to be made out by the Chief Presidency Magistrate that a complaint made to a person in authority like the Honourable Minister would, it is doubtful, amount to such excessive libel as it would have been if Mr. Bhatnagar had made these accusations in the press or to other parties not connected with the administration of justice, would hardly be tenable, , provided the application made to the Honourable Minister is made with a view to take action. In the present case no doubt the application urging upon the Honourable Minister to appoint somebody on behalf of the Bombay Government to make an enquiry in the matter. It is, therefore, clear that this application is made to the Honourable Minister with a view to take action in the matter. Consequently the fact that the application is made in confidence with the Honourable Minister would be no defence to an action for contempt against Mr. Bhatnagar.

* Made by me. Bhatnagar is addressed to the Honourable Minister Balasaheb Desai But he has clearly headed in that application.

3. In the application the charges made are : "In

99% cases the accused persons are goaded into pleading "Guilty" and the Court(13th Court presided over by Major Shellom at Worli) is a machinery for imposing fined on one and sundry. There is no element of justice in the proceedings before it and it was time there was some Government action to guarantee not only justice and fair treatment to the people but a feeling of security for those who figure as parties. If an accused knows that the magistrate will impose a heavier fine if the accused pleaded " Not Guilty" and will impose a lighter fine if he pleaded "Guilty" though in fact he was not guilty, there can be no pretence of justice in that court. In the 8thCourt Mr. Khambatta presides.. This gentleman as a magistrate has adopted a most reprehensible attitude towards the advocates, the parties and towards all others who have to attend his Court. He is trying to figure as the true copy of Mr. Winston Churchill with all his elements of superiority-complex, obstinacy and haughtiness towards the parties who appear before him. These magistrates care a damn for the ministers and for the cause of justice. They are there to show their petty-mindedness and the power which by law they enjoy." Instead of using the power to enable society to prevent crimes, these types of magistrates promote crimes and during the proceedings of the cases give enough harassment to the other party." It is clear that this criticism of the two Presidency Magistrates by Mr.Bhatnagar amounts to a gross kind of contempt and it would be impolite to ignore it. The Chief Presidency Magistrate may therefore be instructed to move the High Court in the matter.

Sd/- P.M.Lad.
14-9-48.
Remembrancer of Legal Affairs.

U.R. to H.D. No. 8759 Dated 15th September 1948.

V.M.D./14-5
4c.

Home Department.

Submitted with ref. to our notes at pp. 7-8 ante.

2. For the reasons explained by him the R.L.A. does not agree with view of the C.P.M. and states that it would be impolitic to ignore the allegations made by Mr. Bhatnagar. The R.L.A. has therefore advised that the C.P.M. may be instructed to move the High Court in the matter. We may agree with the H.Ct. R.L.A. and instruct the C.P.M. according.

Sd/- M.R.D.
19-9

V.M.D./14-5
46.

Letter

To

The Chief Presidency Magistrate.
Bombay.

Subject :- Letter from Mr. C.B.L. Bhatnagar.

No. 0/10119-B. Dt. 24th Septmeber 1948.

Ref. correspondence ending with your letter No. 3797, dated the 30-7-48.

2. Government desires that Mr. Bhatnagar should be proceeded against for contempt of court. You are therefore requested to move the High Court in the matter. A copy of H.L.A's opinion No. 8759, dated the 15-9-48, is enclosed for your information.

Sd/-

for Secretary to the Government of
Bombay. H.D.

V.H.D./14-5
14c.

No. 122 of 1948.
Esplanade Police Court,
Bombay, 30th October 1948.

From,

Oscar H. Brown, Esquire, C.I.E., O.B.E., Bar-at-Law,
Chief Presidency Magistrate, Bombay.

To,

The Secretary to the Government of Bombay,
Home Department.

Subject : Letter from Mr. C.B.L. Bhatnagar.

Sir,

With reference to your letter No. C/10119-B dated the 24th September 1948, I have the honour to send herewith the draft of a letter (with enclosures) by means of which I propose (as desired by Government) to move the High Court to take proceedings for contempt of Court against Mr. C.B.L. Bhatnagar.

As the matter is of importance, I request that my draft letter may be sent to the Hon'ble the Advocate General for the purpose of being settled by him. For that purpose it would also be necessary to send to him the entire file, which is with your Department, containing the earlier correspondence between you and me on the subject as well as the opinions expressed by the learned Remembrancer of Legal Affairs.

I trust you will also request the learned Advocate General to appear in the matter in the High Court when the Rule comes on for argument.

Yours faithfully,

Sd/-
Chief Presidency Magistrate,
Bombay.

V.H.D./14-5
4c.

Home Department.

Submitted with ref. to our letter No. O/10119-B, ~~dated the~~ dated the 24-9-48.

2. These papers may now be passed or U.O. to the L.D. for further action as suggested by the C.P.M., Bombay.

Sd/-
4-11-48.

U.O.R. to H.D. Dated 5-11-48.

V.M.D./14-5
4c

Legal Department.

Submitted.

2. The G.P. H.C. has been instructed to settle the Chief Presidency Magistrates draft in consultation with the Chief Presidency Magistrate and the Advocate General and to engage the A.G. as desired by the C.P.M.
There papers may now be returned to the H.D.

A.C.R. Sd/- R.T.K.
16-11

U.R. to H.D. No 625- Confl. of 18th November 1948.

Home Department.

Submitted with ref. to our o.n.,-p. 70 dated the 4-11-48.

2. The result of the proceedings against Mr. Bhatnagar may be awaited.

Sd/-
27-11-48.

A.S. Sd/-
30-11

Home Department.

These papers may be shown U.O. to the L.D. with a request to state whether the case in question has been decided and, if so, with what result.

Sd/- 4-4-49.

A.S. Sd/-
4.4

U.R. to H. D. dated 4.4.49

R.1

Legal Department. No. 51-43.
7-4-49.

Submitted.

2. Please see the H.D. note on pre-page.

The papers underlying the proceedings to be taken against Mr. C.B. Bhatnagar for alleged contempt of Court were forwarded to the C.P.-H.C. with this office Confl.-letter No. 621 ml dated 16-11-1948. This Office is not aware at what stage the proceeding are, at present. The C.P. H.C. may therefore the requested to state as to how the matter stands.

Sd/- 8-4

U.H. to C.P. H.C. Bombay No 3845 dated 8-4-49.

V.H.D./14-5
4c.

No. 3741.

Office of the
Government Pleader, High Court,
B o m b a y, 29th July 1949.

Forwarded with compliments to the Advocate General, Bombay, for necessary action as all the papers in the case have been sent to him under this Office No.4936 dated 18.11.48.

Sd/-
Government Pleader, High Court,
Bombay.

No. 1220

OFFICE OF THE
Government Pleader, High Court.
B o m b a y, 13 th February 1952.

From

Shri H.M. Choksi, B.A. (Hons.) LL.B.,
Government Pleader, High Court.

The Remembrancer of Legal Affairs,
Bombay.

Subject :- Contempt of Court proceedings
against Shri C.B. Bhatnagar.
....

Sir,

I have the honour to forward herewith all the papers received from the Ex-Advocate General, Bombay, (Shri C.K. Daphtary.)

Your faithfully,

Sd/-

Government Pleader, High Court.

V.M.D./14-5.
4c

Legal Department.

Submitted.

Please see this office note at p. 73.

The G.P. forwarded through papers to the A.G. on the previous papers were with him It is understood that there papers were forwarded to him for opinion in the matter. The G.P. office does not know what happened in the matter. Nor this office is aware what happened. The Assistant who draft with the case might be aware of the result of this case but he is not present on leave. He is expected to resume on the 1st March. The papers may be kept in away till his return.

Sd/-
19-2-52.

Resubmitted with reference to O.P.H.C's letter No.1220, dated 13-2-1952. This H.D. file and L.D. file C Contempt of Courts/48 appears to have been referred on 8-4-49 to the O.P.H.C. to the state how the matter stands with respect to the proceedings proposed tobe taken against Shri C.B. Bhatnagar under the Contempt of Courts Act. The O.P.H.C. has returned the files back without stating how the matter stands or the action taken in the matter.

His attention may be invited to H.L.A's letter No. 621-Confl., dated 16-11-1948 and he may be requested to state the action taken in the matter.

Sd/-
20-6

Resubmitted.

The O.P. H.C. states that he forwarded the papers to the Advocate General on 16-11-48 and they were returned back without any opinion 2 months after the appointment of Shri Daphtary as Solicitor General of India. That he did not taken any action in the matter.

It may be pointed out that in R.L.A's letter No 621-Confl dated 16-11-48 the O.P. H. C. was requested to settle the draft in consultation with the Advocate General. It was therefore left for him to see that the draft was settled and necessary action taken in the matter.

Sd/-
3-7

The matter has become very old and it may not now be worth while to file Contempt of Court proceeding.

R.L.A. I agree.H.D. may see.

Sd/- P.L.Lad.
3-7-

Sd/- M.R.Desai.
6-7

H.D. /14-5 4c.

No. 10359
Legal Department,
Bombay Castle (Bombay No.1), 21st June 52

To

The Government Pleader,
High Court,
Bombay.

Subject :- Contempt of Court proceedings against Shri C.B.Bhatnagar.

Sir,

With reference to your letter No. 1820, dated the 13th February 1952, I have the honour to invite your attention to R.L.A's letter No. 621-Confl. dated the 16th November 1948 and to request you to state the action taken in the matter.

Yours faithfully,

Sd/-

for Deputy Secretary to Government.

V.M.D./14-5
4c.

No. 4427.

Office of the
Government Pleader, High Court,
B o m b a y , 23rd June 1952.

From

Shri H.M. Choksi, B.A.(Hons.) LL.B.,
Government Pleader, High Court.

The remembrancer of Legal Affairs,
Bombay.

Subject :- Contempt of Court proceedings
against Shri C.B. Bhatnagar.

Sir,

With reference to your letter No. 10359 dated the 21st June 1952, on the above subject, I have the honour to state that I had forwarded the papers to the Hon'ble the Advocate General on 18-11-1948 under this office No.4936. The same were returned ~~to me~~ by to me by the Advocate General's Office two months after the appointment of Shri C.K. Daphatary as Solicitor General of India without giving any opinion. No action was taken by me and the papers were returned to you.

Yours faithfully,

Sd/-

Government Pleader, High Court.

V.H.D./14-5
4c.

No. 5883

From

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY.

To

The Remembrancer of Legal Affairs, Bombay.

Bombay, 9-8-1952.

Sir,

Referring to your letter No. 12642 dated 30-7-1952, I have the honour to inform you that the case noted in the margin was heard by the High Court on

Cri. Appln- 657/52	
Digamber Hari Charegaonkar	
Vs.	
State	

1- 8-52 when the following order was passed:-

" The Court disposes of the application. "

Yours faithfully,

Sd/-

for Government Pleader, High Court.

V.M.D./14-5
4c.

R.1. No. 18163/20-6-52

Office of the R.L.A.

The R.L.A. is requested to advise whether the comments in the attached circular (pp. 3-6 ante) would amount to contempt of Court.

2. The case of Krishna Mahadeo was decided by the Sessions Court on 17th April 1952 and the sentence has now been confirmed by the High Court on 12th June 1952. The circular was presumably issued during the period when the case was before the High Court and in the circumstances, the comments therein would amount to contempt of Court (see R.L.A's opinion No. 138-Confl. dated 4-2-1952). Although it is difficult to say whether the High Court will take any action, the circular, having regard to its contents, deserves to be brought to their notice especially in view of the attempt made to collect signatures.

Sd/- P.M. Lad.
1-7
Rem[em]bancer of Legal Affairs.

U.H. to H.D. No. 10906, dated the 1st July 1952.

V.M.D./14-5
4c.

From:

The District Magistrate,
Ratnagiri.

To:

The Remembrancer of Legal Affairs,
Bombay.

Subject: Editor of Malvan Patrika.
Action under Contempt of Courts.
Act, 1926 ... against the ...

No. POL. 843. Ratnagiri, 19th August 1952.

Sir,

I have the honour to forward werewith the proceedings started by the Resident Magistrate, F.C., Malvan, against Shri Ganesh Suryaji Bandivadekar, Editor of Malvan Patrike, for publishing a letter in the issue of the said paper dated 7.3.52 for taking action under the Contempt of Courts Act, 1926 (XII of 1926), along with the report of the Resident Magistrate, F.C., Malvan, and English tranalations of all the Marathi exhibits contained in the proceedings.

The facts of the case in brief are as under:-

The P. S. I. Malvan, has sent up a charge sheet against three persons viz. (1) Shri Subhodh Sahadeo Achareker (2) Shri Sahadeo Hari Acharekar and (3) Shmi Salvador Bastav DSouza, all of Malvan, for offences under sections 363, Indian Penal Code, to the court of the Resident Magistrate, F.C., Malvan, in respect of a girl by name Prabhavati Narayan Ranade, a minor under 18 years of age, One Shri Ramchandra Narayan Ranade, the brother of the kidnapped girl was the first informant to the Police. While the case was going on in the court of the Resident Magistrate, F.C., Malvan, the Editor of the Malvan Patrika, Shri G.S. Bandivadekar published the letter under the caption "Indirawainiche Patra". This letter contains a comment on the evidence that has been led by the prosecution in the case till the the day of publication of the letter.

Shri R.N. Ranade, the informant being aggrieved by the publication of the said letter, made an application to the Resident Magistrate, Malvan, on 17.3.1952, requesting the court to take action against the Editor under the Contempt of Courts Act, for publishing the said letter. The Court, however, calle upon the Editor to submit his say in the matter. The Editor, therefore, appeared before the Court and submitted his written statement on 25.4.1952. He contended that he had no intention to bring the courtk into contempt nor had he any intention to belittle the court in the eyes of the public. So in the end he expressed regret for the wrong, if any, committed by him in publishing the said article in the issue of Malvan Patrika for which he requested the court to pardon him. The Resident Magistrate, Malvan, held that the letter amounted to contempt of court and as the Editor could not be prosecuted under the indian Penal Code, he recommended that the High Court may be moved to take action against the Editor under the above mentioned Act.

If the contents of the letter are read, it would be apparent that by publication of the letter in question, there is interference in the Courtés work and that the writer wanted the court to believe that the accused are innocent persons. It is suggested that the girl has freed herself from her parents and that the prosecution has given the colour of an offence to her act. Not only this but he expressed that the accused No. 2 Shri Sahadeo Hari Acharekar had not committed any offence. Besides, there are comments on belief of the informant and further expressed the view that the girl was not kidnapped for a bad purpose. All this will necessarily cause prejudice in the mind of the Court regarding the merits of the case.

In the circumstances, explained above, I recommend that Their Lordship may please be moved to take action against the Editor of Malvan Patrika, under the Contempt of Courts Act, 1926.

Shri S.G. Bandivadekar is a resident of Malvan proper.

Yours faithfully,

Sd/- G B.Deshmukh
District Magistrate,
Ratnagiri.

V.M.D./14-5
4c .

No. 14294
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 3rd September 1952.

To

The District Magistrate,
Ratnagiri.

Subject:- Editor of Malvan Patrika
Action under Contempt of Courts
Act, 1926 ... against the ....

Sir,

With reference to your letter No. POL 543, dated the 19th August 1952, on the subject noted above, I have the honour to state that in such cases it is for the Magistrate himself who holds that there has been contempt of Courts to report the matter to the High Court for taking action under the Contempt of Courts Act. I am therefore to request you to direct the Magistrate to take action accordingly in the above case. Papers of the case accompany.

Yours faithfully,
Sd/-
for Remembrancer of Legal Affairs.

V.M.D./14-S

R.I. No. 21611 dt. 15-9-52.

Submitted.

2. On the recommendations of the H. on the High Court, the H.D. proposes to issue a circular to the effect that persons committed to a Civil Jail for Civil contempt of Court , should be given subsistance allowance as is granted to judgments debtors confined in Civil Jails. The draft circular in this behalf is shown to the R.L.A. before issue.

3. No point of law is involved in this reference. The proposal of the High Court appears reasonable and may be accepted.

Sd/- 16-9

D.S. (Civil)

Sd/- R.T.K. 16-9

Sd/- P.M.Lad. 16-9

Office of the R.L&A.

Seen and returned.

The proposal of the High Court appears reasonable and may be accepted.

Sd/- P.M.Lad.
R.L.A.

U.O.R. to H.D. No. 15337 dated 18-9-52.

V.M.D./14-5
4c.